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Code

CODE OF VIRGINIA

DECLARATION OF INDEPENDENCE

AND
CONSTITUTION OF THE UNITED STATES

AND THE
DECLARATION OF RIGHTS

AND
CONSTITUTION OF VIRGINIA.

PRINTED BY AN ACT OF THE GENERAL ASSEMBLY OF VIRGINIA,
IN THE FIFTEENTH YEAR OF THE YEAR 1821.

W. D. FORD,

PRINTED BY W. D. FORD, 1821.

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THE
CODE OF VIRGINIA:

WITH THE

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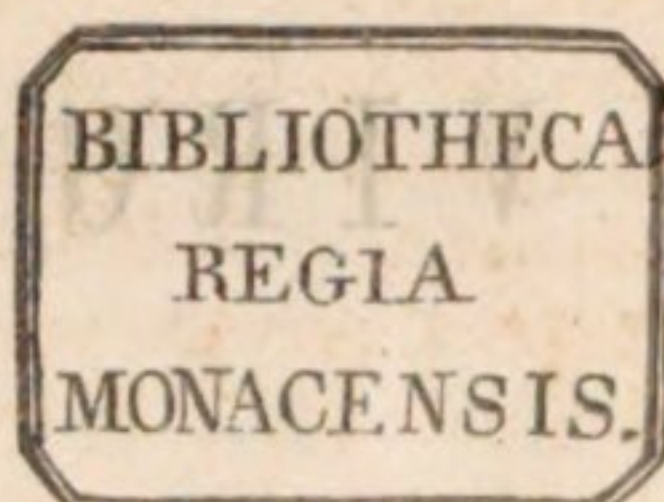
CONSTITUTION OF VIRGINIA.

PUBLISHED PURSUANT TO AN ACT OF THE GENERAL ASSEMBLY OF VIRGINIA,
PASSED ON THE FIFTEENTH DAY OF AUGUST 1849.

RICHMOND:

PRINTED BY WILLIAM F. RITCHIE, PUBLIC PRINTER.

1849.



Entered according to the Act of Congress this twenty-second day of September in
the year one thousand eight hundred and forty-nine, for
THE COMMONWEALTH OF VIRGINIA,
in the clerk's office of the District Court of the Eastern District of *Virginia*.

PREFACE.

It is deemed proper to prefix to this volume some account, as well of what has been done in former times towards the revisal and publication of the laws of *Virginia*, as of those proceedings which have direct connection with the present work.

The first revisal* was at a session of the assembly begun the 21st of February and ended the 6th of March 163 $\frac{1}{2}$:† at the ensuing session, begun the 4th of September 1632, the revised laws were re-enacted with some alterations.‡

The second revisal was at a session begun the 2d of March 164 $\frac{3}{4}$.§ These two revisals were by the assembly itself, without (as appears) any previous committee of revisors.

In December 1656 a committee was appointed "for review of the acts;"|| the review was made at that session;¶ afterwards they were copied into one volume, and being examined by a committee, were adopted at the session of March 165 $\frac{7}{8}$.**

The copies of the laws passed at these three revisals were all in manuscript; the publication thereof was by reading them at the first terms of the monthly courts, after they were in force, and by means of copies kept in the clerks' offices of the courts, to be read by those who desired.†† The only authentic copies of these manuscript editions, which in 1819 were known to be extant, had belonged to Mr. *Jefferson* and were then believed to be in the library of congress.‡‡

In March 166 $\frac{9}{10}$ Col. *Francis Morrison* (deputy governor) and *Henry Randolph*, clerk of the assembly, were appointed to review the acts and present a draft of them, with such alterations and amendments as they should find necessary, to the next assembly. The report was made and the revised acts passed at the session held the 23d of March 166 $\frac{1}{2}$. This, it will be perceived, was only about four years after the previous review. For the revisal at this time the preamble to the act assigns reasons; referring chiefly to changes in the government of the country which produced alterations in the laws.§§ The review in 165 $\frac{7}{8}$, it is to be remembered, was during the protectorship of *Cromwell*; the revisal now was after the restoration of *Charles the Second*. Under the act of 166 $\frac{1}{2}$ the laws were to be written in a book which, after being examined and signed by the (deputy) governor and speaker, was to be accounted the original record of the country and remain in the hands of the clerk of the assembly; they were to be published by the courts in their counties before the first of August following, when they were to

* Hen. Stat. vol. 1, p. 153 to 177.

† The reason for expressing the year in this way is explained in Hen. Stat. vol. 1, p. 393, 4; and "Early Voyages to America," p. 87.

‡ Id. p. 421.

†† Id. p. 202.

§ Hen. Stat. vol. 1, p. 179 to 202. § Id. p. 238 to 282,

¶ Id. p. 425, 427.

‡‡ 2 R. C. p. 323.

** Id. p. 432 to 493; also 495.

§§ Hen. Stat. vol. 2, p. 41 to 43.

begin to be in force; and a copy was sent to Sir *William Berkeley*, (the governor) then in *England*, to procure the royal confirmation, and thereupon deliver the laws to the assignee of *Henry Randolph*, clerk of the assembly, to be printed; to whom, his heirs and assigns, sole license was granted to print them for 10 years.*

Some time between 1684 and 1687 was printed, at *London*, *Purvis's* "Collection of the Laws of *Virginia* now in force, carefully copied from the assembly records."†

In 1699 a joint committee of three councillors and six burgesses was appointed, for the revisal of the laws, with very extensive powers. Two gentlemen were appointed assistants, to give the committee advice and aid; the committee were allowed a clerk, and authority was given them "to revise, alter, add to, diminish, repeal, amend or revive all or any of the said laws and reduce the same into bills, in such manner and form as they shall think fit and necessary," which bills were to be reported to the assembly, from time to time.‡ The revision was completed in 1705. The laws then passed are printed in the 3d volume of *Hening's* Statutes at Large, p. 229 to 481, from a manuscript copy mentioned by him in a note at the former page.

In 1722 was published, at *London*, "an abridgment of the public laws of *Virginia* in force and use June 10th, 1720;" the preface to which adverts to the desire evinced by the people for some years to have their laws printed, and suggests that this abridgment might be convenient till the larger volume could be had.

In 1733 *Parks'* edition was printed at *Williamsburg*. Mr. *Leigh* remarks that this edition has always been considered authoritative, but "by what authority is nowhere to be found but in the title page, where it is stated to be published pursuant to an order of the general assembly held in 1727."§ It seems to be referred to in the act of August 1734, providing for the return of law books in case of a justice's dying or refusing to serve, which act recites that "the edition of all the laws in force at the end of the last session of this general assembly hath been published at the public expense and many copies have been distributed, gratis, to the governor, council and burgesses, and among the justices of the peace in the several counties of the colony."||

In 1745 another joint committee of the council and house of burgesses was appointed to revise the laws.¶ The laws of this revision were passed in 1748, and took effect from the 10th of June 1751.** They were printed in 1752 by *William Hunter* at *Williamsburg*. Ten of the laws in this edition were repealed by the king's proclamation.††

"An exact abridgment of all the public acts of assembly of *Virginia*, in force and use January 1st 1758," by *John Mercer*, Gent. was published at *Glasgow* in 1759.

In 1769, an edition of the laws was printed at *Williamsburg*, by *W. Rind*, *A. Purdie* and *J. Dixon*, by order of the general assembly. This was the latest edition at the period of the Revolution.

That event made reformation of the laws necessary; and the act of October 1776 provided for it. After reciting that "on the late change which hath of necessity been introduced into the form of government in this country, it is become also necessary to make corresponding changes in the laws heretofore in force, many of which are inapplicable to the powers of government as now organized, others are

* Hen. Stat. vol. 2, p. 147, 8. † 2 R. C. of 1819, p. 324. ‡ Hen. Stat. vol. 3, p. 181 to 185, and p. 201, 2.

§ 2 R. C. of 1819, p. 324. || Hen. Stat. vol. 4, p. 437. ¶ Id. vol. 5, p. 321.

** Hen. Stat. vol. 5, p. 408 to 558. †† Id. p. 432, 567.

founded on principles heterogeneous to the republican spirit, others which, long before such change, had been oppressive to the people, could never yet be repealed while the regal power continued, and others having taken their origin while our ancestors remained in *Britain* are not so well adapted to our present circumstances of time and place, and it is also necessary to introduce certain other laws, which, though proved by the experience of other states to be friendly to liberty and the rights of mankind, we have not heretofore been permitted to adopt;”—this act provided for the appointment of five persons, with authority “to revise, alter, amend, repeal or introduce all or any of the said laws, to form the same into bills and report them” to the general assembly.* The revisors appointed were *Thomas Jefferson*, *Edmund Pendleton*, *George Wythe*, *George Mason* and *Thomas Ludwell Lee*. Of this revision Mr. *Jefferson* has furnished a history in the first volume of his Works, page 34 to 40. When the revisors proceeded to the distribution of the work, Mr. *Mason* and Mr. *Lee* (Mr. *Jefferson* states) excused themselves as being no lawyers; soon after which the former resigned and the latter died. The other three divided the work among them. They thought it useful “in all new drafts, to reform the style of the later British statutes and of our own acts of assembly; which, from their verbosity, their endless tautologies, their involutions of case within case and parenthesis within parenthesis, and their multiplied efforts at certainty, by *said*s and *aforesaid*s, by *ors* and by *ands*, to make them more plain, are really rendered more perplexed and incomprehensible, not only to common readers, but to the lawyers themselves.” The bills prepared by them were reported to the assembly on the 18th of June 1779† and published by its order. Some of these bills were occasionally passed before 1785, but it was not till that year that the report of the revisors was taken up in a regular manner.

Meanwhile the general assembly, by a resolution of the 16th of June 1783, instructed the executive to cause the acts of assembly subsequent to 1779, and the ordinances of convention in force, to be collected into one code with a proper index and marginal notes, (to be revised and examined by any two judges of the high court of chancery,) and have copies thereof printed.‡ The chancellors (*Edmund Pendleton*, *George Wythe* and *John Blair*) made a communication on the subject in November 1783;§ in 1785 their edition was printed, at *Richmond*, by *Thomas Nicholson* and *William Prentis*; though generally called *The Chancellors’ Revisal*, it was rather a collection of the laws than a revisal of them.

In October of the same year, the report which the committee of revisors had made in 1779 was in the house of delegates referred to the committee for courts of justice with an instruction to prepare and bring in bills pursuant to such of the bills contained in the code of the revisors as were not of a temporary nature.|| A few days afterwards Mr. *Madison* from the committee for courts of justice presented 117 of the printed bills in the code.¶ Many of them were passed at that session. When the session ended, there remained pending sixty-one, which were referred at the session of October 1786.** After acting on such of these as it found convenient, the legislature before its adjournment passed an act “for completing the revision.” It provided for the appointment of a committee of three persons to take into consideration such of the bills contained in the revisal reported by the committee

* Hen. Stat. vol. 9, p. 175.

† Hen. Stat. vol. 9, p. 175, 6.

‡ Id.

§ Id. vol. 11, p. 547.

|| Journal 1785, Oct. 27.

¶ Id. Oct. 31st.

** Journal 1786, Oct. 30; Nov. 1.

appointed in 1776, as had not been enacted into laws; to examine what alterations therein might be rendered necessary by a change of circumstances or otherwise, and to report thereupon to the next assembly; the committee were also to take into consideration all acts of assembly passed since the said revisal was prepared.* Nothing seems to have been done under this act.

Another act for a revisal, passed the 18th of November 1789,† was not carried into effect. It was followed by the act of October 1790 appointing *Edmund Pendleton, Henry Tazewell, St. George Tucker, Joseph Prentis, Arthur Lee* and *William Nelson, junior*, to perform the following duties: 1st, to prepare bills upon the subject of such British statutes, if any there be, which are suited to this commonwealth and have not been enacted in the form of *Virginia* laws; 2dly, to report what laws or parts of laws which are of a general concern shall remain in force at the close of the next session of the general assembly; 3dly, to prepare bills upon the subject of such laws as from their multiplicity ought to be reduced into single acts; 4thly, to report what laws or parts of laws are either unfit to be continued in force or unnecessary to be published in any code of the laws; 5thly, to note in due order of time and report the titles of all laws which may be proper to be omitted in a general compilation of the laws; and 6thly, to instruct the clerk of the house of delegates, as far as it may be in their power, how to obtain, for the use of his office, copies of those laws, the rolls whereof are lost.‡ Legislative action followed at October session 1792. Under the act then passed for a republication of the laws,§ there was printed at *Richmond* in 1794 by *Augustine Davis* the volume called *The Revised Code of 1792*; it contained all the general laws in force at the period of its publication, including those of the session which commenced in November 1794.

In 1803 *Samuel Pleasants, jun.* and *Henry Pace* published an edition of the code of 1792, which included the public acts afterwards to the end of the session of 1801-2, and in 1808 *Samuel Pleasants, junior*, published a continuation of the code, containing a collection of acts of a public and permanent nature passed since the session of 1801, with some other acts omitted in the previous collections; copies of these volumes were subscribed for on behalf of the state under acts of 1801, 2, p. 14, ch. 15 and 1806, 7, p. 9, ch. 14. In 1814 Mr. *Pleasants* printed a new edition of the code with a supplement to the second volume, containing the public acts passed since the session of 1807; of this edition copies were purchased by the state under an act of 1811-12, p. 31, ch. 21. The legislative sanction was also given to the publication by *William Waller Hening* in 13 volumes of the statutes of *Virginia* from 1619 to 1792;|| and to the publication by *Samuel Shepherd* in 3 volumes of a continuation of those statutes from 1792 to 1806.¶

Duties like those mentioned 2dly, 3dly, 4thly and 5thly in the act of 1790 were entrusted to the revisors appointed by the act of the 15th of February 1817;** they were also to make such notes of explanation and reference as they might deem essential to a clear understanding of the laws. The revisors appointed by this act were *Spencer Roane, John Coalter, Robert White, William Brockenbrough* and *Benjamin W. Leigh*. Their report, made to the general assembly at its ensuing session,†† expresses regret at the shortness of the time allowed them. Owing to this and other causes, the alterations proposed by them were not numerous and were confined to cases which they believed to be clear and palpable.‡‡ The bills

* Hen. Stat. vol. 12, p. 409. † Id. vol. 13, p. 8.

† Hen. Stat. vol. 13, p. 130, 31.

§ Id. 531.

|| Acts of 1807-8, p. 24, ch. 17; 1812-13, p. 40, ch. 29; 1818-19, p. 15, ch. 18.

¶ 1834-5, p. 16, ch. 15. ** 1816-17, p. 23, ch. 17. †† Journal of house of delegates 1817-18, p. 9, 10. ‡‡ Id.

which they reported generally reduced into one act the several acts on a subject, with scarcely any change in the language of the previous laws. At the two sessions of 1817-18 and 1818-19 these bills were acted on by the legislature; whereupon the act of the 12th of March 1819* was passed providing for the publication of an edition of the laws (in two volumes) under the immediate superintendence of *Benjamin Watkins Leigh*; the two volumes published under this act are known as *The Revised Code* of 1819.

Early in 1833 there was published by *Samuel Shepherd & Co.* a *Supplement to the Revised Code* containing the acts of a public and permanent nature passed since 1819. And a digest of the laws of *Virginia* of a permanent character and general operation (illustrated by judicial decisions) by *Joseph Tate*, Esquire, was also published in 1823; of which work there was a new edition in 1841. But except when investigation could be facilitated by means of those or other works published on private account, it was necessary to examine the Code of 1819 and the acts of thirty subsequent sessions, to ascertain the laws in force in 1849. This was only one of many inconveniences resulting from the condition of the laws. A revisal was contemplated, first of a partial nature, but it was afterwards determined that it should be general.

By acts of the 12th of March 1834,† 23d of March 1836,‡ 22d of March 1841,§ and 20th of February 1846,|| revisors were appointed to revise and digest the criminal code and make report by bill or bills specifying therein explicitly and plainly the existing offences against the laws, and so graduating and equalizing the punishments for the same, as that each particular offence shall have its proper and appropriate punishment in form and measure. Mr. *Chapman Johnson* made some progress under the acts of 1836 and 1841, but was prevented from completing the revision by reason of ill health and other causes. The notes, copies and drafts of bills prepared by him were under the act of 1846 delivered to Mr. *Robert G. Scott*, who was appointed thereby to complete the work commenced by Mr. *Johnson*.

During the same session at which that act passed, to wit, on the 20th of February 1846,¶ there was an act appointing *John M. Patton* and *Conway Robinson* to revise and digest the civil code. It was made their duty to revise all the general statutes of the commonwealth then in force (other than those which were to be revised under the act providing for a revision of the criminal code) and report to the general assembly which of the said general statutes in their opinion ought and which ought not to remain in force, with drafts of such bills as it might seem to them the general assembly should pass. In performing this duty, they were required to suggest such contradictions, omissions or imperfections as they might perceive in the statutes, and the mode in which the same might be reconciled, supplied or amended; to arrange under appropriate chapters, titles and sections, all the different acts and parts of acts relating to the same subject matter which it might seem to them ought to be continued or adopted, with such notes and explanations as they should deem essential to a clear understanding of the same; and in all respects to execute and complete the revision in such a manner as in their opinion would render the general statutes most concise, plain and intelligible.

These revisors found Mr. *Jefferson's* remarks as to the statutes before 1776

* 1818-19, p. 50, ch. 35.
§ 1840-41, p. 51, ch. 21.

† Sess. Acts 1833-4 p. 77, ch. 67.
‡ 1845-6, p. 25, ch. 33.

† 1835-6, p. 43, ch. 65.
¶ 1845-6, p. 26, ch. 34.

applicable to most of those which came under their review; the statutes abounded in contradictions, obscurity, verbosity and tautologies. Being authorized to report either at one time or at different times, they made their first report to the general assembly in February 1846; it stated that they were endeavouring to bring the general statutes of *Virginia* into a single volume, mentioned some general rules proposed by them to avoid repetitions, and developed the plan on which they were proceeding to effect a methodical arrangement of the subjects, remove contradictions, remedy defects and make the statutes plain and intelligible as well as concise; in this report there were 46 chapters under 15 titles. It was followed by an act of the 13th of March 1847, directing the revisors to bring within the scope of their revisal as well all general statutes passed since the 20th of February 1846 or to be passed before the completion of their revisal, as those which were in force on that day. During the same session a report having been made under the last act passed for the revisal of the criminal code, and that report having been referred in the house of delegates to the committee for courts of justice, the fourth section of the said act of the 13th of March 1847, after reciting that it was desirable the civil and criminal code should together constitute a complete code of the statutes of *Virginia*, uniform in plan and execution, and free from either omissions, contradictions or repetitions, referred all such bills as had been or should be reported to the house of delegates at that session by the committee for courts of justice, in connection with the criminal code, and all criminal or penal statutes passed since the preparation of that code, to the revisors of the civil code, in order that they might carry into effect the objects recited in the preamble to this section and with the same power over the whole subject that they then had over the subject of the civil code.

The revisors proceeded, however, first, to complete the revision of the civil code, and in March 1848 made their second general report, embracing chapters from the 47th to the 102d inclusive, under titles from the 16th to the 29th also inclusive. At this session, in response to resolutions of the house of delegates, they made two special reports, one of which resulted in the passage, on the 13th of March 1848,* of an act (under a title somewhat different) establishing a special court of appeals and diminishing the number of judges in attendance on the general court. During the same session the committee (of the house of delegates) for courts of justice, through a sub-committee (consisting of Messrs. *Scott* of *Fauquier*, *Moncure* of *Stafford*, *Harrison* of *Loudoun*, *Mosby* of *Campbell* and *Mayo* of *Richmond* city) framed, and the general assembly passed, the act of the 14th of March 1848, to reduce into one the several acts concerning crimes and punishments and proceedings in criminal cases.†

The revisors made in January 1849 their third general report, embracing chapters from the 103d to the 156th inclusive, under titles from the 30th to the 48th inclusive; at the end of which was a table of amendments to the bills before reported, which appeared to be necessary either because of legislation after they were prepared or for some other reason.

During this session, a joint committee of revision was constituted, consisting on the part of the house of delegates of Messrs. *Moncure*, *Scott*, *Harrison*, *Conway*, *Whittle*, *Smith* and *Booth*, and on the part of the senate of Messrs. *Thompson*, *Witcher*, *Sloan*, *Kinney* and *Ambler*, to whom the reports of the revisors were

* 1847-8, p. 51, ch. 68.

† Id. p. 93 to 164.

referred. A majority of this committee were laboriously occupied while the assembly continued in session, and afterwards during its recess, in examining the reports of the revisors, and making such amendments thereto as they deemed proper. Before these amendments were reported to the assembly, they were usually the subject of conference between the committee and one or the other (and sometimes of both) of the revisors. The revisors proposed many of them in the table before mentioned and suggested others in their interviews with the committee, especially when there was any legislation which seemed to make such suggestion proper; and in such of the amendments as the committee itself proposed, the revisors also generally concurred.

The legislature having adjourned on the 19th of March 1849, to meet on the 28th of May,* to act on the code, the committee, when the legislature so met, reported to it the first, second and third parts of the code with their amendments. The revisors a few days afterwards completed and reported to the assembly the fourth part, embracing chapters from the 157th to the 189th inclusive, under titles 49, 50, 51, 52 and 53. These chapters having, as they were printed, been placed before and examined by the committee of revision,† that committee was ready to report promptly on this fourth part with amendments; on which there was conference in like manner as on those to the three first parts.

The appearance of cholera at the seat of government caused the legislature to adjourn on the 4th of June, to meet on the 11th day of the same month at the *Fauquier* White Sulphur Springs. Early in July the revisors completed the fifth part of the code, embracing chapters from the 190th to the 215th inclusive, under titles 54, 55 and 56. This was their final report and related to the criminal code; it conformed very much to the act of the 14th of March 1848; but contained in addition to the subjects of that act a revision of the laws relating to the penitentiary. The committee soon reported on this fifth part with their amendments.

There having been printed 500 copies of the reports of the revisors, which, from time to time, were distributed among the members of the general assembly, and to some extent among the officers of government,‡ and the amendments made by the committee of revision being also printed and copies thereof furnished to the members, every member thus had the means of knowing the nature of each manuscript bill (containing a part of the code) which was reported by the committee to the house. These bills (five in number,) after being amended in the house of delegates and engrossed, passed that house as thus engrossed; and then amendments were made to each in the senate; in most of which amendments the house concurred.

Upon some amendments of the senate to each of the five bills the two houses disagreed, and then a committee of conference was appointed on the part of each house, to confer on such disagreement and suggest such consequential amendments as were rendered necessary by the amendments agreed to by both houses. One of the revisors (Mr. *Robinson*,) attended the committee of conference and suggested such consequential amendments as seemed to him proper; which on being reported by the committee were agreed to by the two houses.

The general assembly adjourned on the 17th of August 1849, after passing the five acts containing parts of the code, and also an act of the 15th of that month, providing that those five acts shall (without their respective titles and the enacting clause at the commencement of each of them) be deemed and published as one

* 1848-9, p. 261, No. 12, 13.

† Id. p. 260, No. 10.

‡ 1846-7, p. 240, 41, No. 16, 17.

act under the title of "*The Code of Virginia*;" and that the publication shall be in a volume containing also the declaration of independence, the constitution of the *United States* and the amendments thereto; the declaration of rights by the representatives of the people of *Virginia* adopted on the 12th of June 1776; the amended constitution or form of government of *Virginia* adopted the 14th of January 1830; and an exact and copious index. The act provides that the publication shall be under the immediate superintendence of *John M. Patton* and *Conway Robinson*; it requires that they shall prefix to each chapter, a table stating briefly the subject of each section therein, insert or omit such captions to sections, and make such references and notes as may seem to them fit, prepare the index and examine the proof sheets; and that the volume shall be printed on good paper, in such type as may be prescribed by them, well bound in calf and lettered on the back "*Code of Virginia*," of which volume the secretary of the commonwealth is to secure the copyright for the benefit of the commonwealth, and 10,000 copies are to be printed, bound and lettered as aforesaid, and to be evidence for any purpose for which the original act could be received, and with as much effect; the act also provides how these copies shall be distributed and disposed of.

In what manner the duties devolved by this act on the superintendents of the publication have been discharged, will best appear from the volume itself. It has been their wish that the volume should, neither as to its matter nor the style in which it is published, be unworthy of the state which sends it forth; their efforts have been well sustained by the public printer; and the work done by them and him, will, it is hoped, meet the approbation of the general assembly, and the people of the state.

RICHMOND, *December* 1849.

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CHAP. 227.—Of the organization, powers, and jurisdiction of the courts.

RESOLUTION OF VIRGINIA,

FOR A

DECLARATION OF INDEPENDENCE.

A convention of delegates from the counties and corporations in the colony of *Virginia* was held at the capitol in the city of *Williamsburg*, on Monday the 6th of May 1776. The convention resolved itself into a committee on the state of the colony, on the 14th, and again on the 15th. On the latter day, the president of the convention, *Edmund Pendleton*, Esquire, having resumed the chair, Mr. *Archibald Cary*, the chairman of the committee, reported from it certain resolutions; to which the convention agreed unanimously, (one hundred and twelve members being present,) and the first of which is as follows:

Forasmuch as all the endeavours of the United Colonies, by the most decent representations and petitions to the king and parliament of *Great Britain*, to restore peace and security to *America* under the British government, and a re-union with that people upon just and liberal terms, instead of a redress of grievances, have produced, from an imperious and vindictive administration, increased insult, oppression, and a vigorous attempt to effect our total destruction. By a late act, all these colonies are declared to be in rebellion, and out of the protection of the British crown, our properties subjected to confiscation, our people, when captivated, compelled to join in the murder and plunder of their relations and countrymen, and all former rapine and oppression of Americans declared legal and just. Fleets and armies are raised, and the aid of foreign troops engaged to assist these destructive purposes. The King's representative in this colony hath not only withheld all the powers of government from operating for our safety, but, having retired on board an armed ship, is carrying on a piratical and savage war against us, tempting our slaves, by every artifice, to resort to him, and training and employing them against their masters. In this state of extreme danger, we have no alternative left but an abject submission to the will of those overbearing tyrants, or a total separation from the crown and government of *Great Britain*, uniting and exerting the strength of all *America* for defence, and forming alliances with foreign powers for commerce and aid in war: Wherefore, appealing to the SEARCHER OF HEARTS for the sincerity of former declarations, expressing our desire to preserve the connexion with that nation, and that we are driven from that inclination by their wicked councils, and the eternal laws of self-preservation:

Resolved unanimously, That the delegates appointed to represent this colony in General Congress, be instructed to propose to that respectable body to declare the United Colonies free and independent states, absolved from all allegiance to, or dependence upon, the crown or parliament of

Great Britain; and that they give the assent of this colony to such declaration, and to whatever measures may be thought proper and necessary by the Congress for forming foreign alliances, and a confederation of the colonies, at such time, and in the manner, as to them shall seem best: Provided, that the power of forming government for, and the regulations of the internal concerns of, each colony, be left to the respective colonial legislatures.

DECLARATION OF INDEPENDENCE.

In congress, on the 7th of June 1776, *Richard Henry Lee*, at the request of the other delegates from *Virginia*, moved (in obedience to their instructions,) that congress should declare that these united colonies are, and of right ought to be, free and independent states; that they are absolved from all allegiance to the British crown, and that all political connexion between them and the state of *Great Britain* is, and ought to be, totally dissolved; that measures should be immediately taken for procuring the assistance of foreign powers, and a confederation be formed to bind the colonies more closely together.* On the 8th, congress referred the proposition to a committee of the whole, into which it immediately resolved itself; and that day and Monday the 10th were passed in debating the subject.† It appearing from the debates that the colonies of *New York*, *New Jersey*, *Pennsylvania*, *Delaware* and *Maryland*, were not yet ready for the measure, it was thought prudent to postpone the final decision to the first of July; but that no time might be lost in case congress should agree to the proposition, a committee was appointed to prepare in the meanwhile a declaration of independence. Mr. *Lee*, being called home by the illness of his lady, was not on the committee. It consisted of *Thomas Jefferson*, *John Adams*, *Benjamin Franklin*, *Roger Sherman*, and *Robert R. Livingston*.‡ Mr. *Jefferson*, being desired to do so, drew the declaration. Before reporting it to the committee, he communicated it separately to Mr. *Adams* and Dr. *Franklin*, who made two or three verbal alterations by interlining with their own hands. A fair copy being then made, it was reported to the committee, and, without being altered by the committee, was, on the 28th of June, reported by it to congress.§

On Monday the 1st of July, the house resolved itself into a committee of the whole and resumed the consideration of the original motion made by the delegates of *Virginia*; which being debated through the day, was carried by the votes of *New Hampshire*, *Connecticut*, *Massachusetts*, *Rhode Island*, *New Jersey*, *Maryland*, *Virginia*, *North Carolina* and *Georgia*. *South Carolina* and *Pennsylvania* voted against it. *Delaware* having but two members present, they were divided. The delegates from *New York* declared they were for the motion themselves and were assured their constituents were for it, but by instructions given them nearly a year before, when reconciliation was the general object, they were enjoined to do nothing to impede that object; they therefore thought themselves not justifiable in voting on either side, and asked leave to withdraw from the question, which leave was given.||

The resolution being then reported to the house, Mr. *Rutledge* of *South Carolina* requested the determination might be put off to the next day, as he believed his colleagues, though they disapproved the resolution, would then join in it for the sake of unanimity. The question whether the house would agree to the resolution was accordingly postponed to the next day, when it was again moved, and *South Carolina* concurred in voting for it. In the meantime, a third member had come from *Delaware* and turned the vote of that colony in favour of the resolution. Members of a different sentiment attending that morning also from *Pennsylvania*,

* *Jefferson's Works*, vol. 1, p. 10, and p. 96, 7. *Madison Papers*, vol. 1, p. 9, 10. † *Id.*

‡ *Id.* p. 14, and 97 of former, p. 16 of latter.

§ Mr. *Jefferson's* letter of Aug. 30, 1823, to Mr. *Madison*.

|| *Jefferson's Works*, vol. 1, p. 14, 15, and p. 97, 8. *Madison Papers*, vol. 1, p. 16, 17, 18.

their vote was changed; so that the whole twelve colonies who were authorized to vote at all, gave their voices for it; and within a few days (July 9,) the convention of *New York* approved it.*

On the same day (the second of July,) congress resolved itself into a committee of the whole to consider the declaration of independence which had been reported from the committee of five. A clause reprobating the enslaving the inhabitants of *Africa*, and certain passages which conveyed censure on the people of *England*, were struck out; and there were some other alterations. The debates having taken up the greater part of the second, third and fourth days of July, were on the evening of the last closed; whereupon the declaration was reported by the committee of the whole, agreed to by the house, and signed by every member except Mr. *Dickinson*.†

It was then resolved that copies of the declaration should be sent to the several assemblies, conventions and committees or councils of safety, and to the several commanding officers of the continental troops; and that it should be proclaimed in each of the *United States* and at the head of the army.‡

The declaration thus signed on the 4th on paper, was engrossed on parchment and signed again on the 2d of August.§ It will be found, as it was originally reported, in *Jefferson's Works*, vol. I., p. 16 to 21, and in the *Madison Papers*, p. 18 to 27. As it was adopted, it is as follows :

When, in the course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume, among the powers of the earth, the separate and equal station to which the laws of nature and of nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

We hold these truths to be self-evident: that all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these, are life, liberty, and the pursuit of happiness; that, to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed; that, whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute a new government, laying its foundation on such principles, and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness. Prudence, indeed, will dictate that governments, long established, should not be changed for light and transient causes; and, accordingly, all experience hath shown, that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But, when a long train of abuses and usurpations, pursuing invariably the same object, evinces a design to reduce them under absolute despotism, it is their right, it is their duty, to throw off such government, and to provide new guards for their future security. Such has been the patient sufferance of these colonies, and such is now the necessity which constrains them to alter their former systems of government. The history of the present king of *Great Britain* is a history of repeated injuries and usurpations, all having, in direct object, the establishment of an absolute tyranny over these States. To prove this, let facts be submitted to a candid world :

He has refused his assent to laws the most wholesome and necessary for the public good.

He has forbidden his Governors to pass laws of immediate and pressing importance, unless suspended in their operation till his assent should

* *Jefferson's Works*, vol. 1, p. 14, 15, and p. 97-8. *Madison Papers*, vol. 1, p. 16, 17, 18.

† *Id.* ‡ *Journal of Congress.* § *Jefferson's Works*, vol. i. page 21.

be obtained ; and, when so suspended, he has utterly neglected to attend to them.

He has refused to pass other laws for the accommodation of large districts of people, unless those people would relinquish the right of representation in the legislature ; a right inestimable to them, and formidable to tyrants only.

He has called together legislative bodies at places unusual, uncomfortable, and distant from the depository of their public records, for the sole purpose of fatiguing them into compliance with his measures.

He has dissolved representative houses repeatedly, for opposing, with manly firmness, his invasions on the rights of the people.

He has refused, for a long time after such dissolutions, to cause others to be elected ; whereby the legislative powers, incapable of annihilation, have returned to the people at large for their exercise ; the State remaining, in the mean time, exposed to all the danger of invasion from without, and convulsions within.

He has endeavoured to prevent the population of these States ; for that purpose, obstructing the laws for naturalization of foreigners ; refusing to pass others to encourage their migration hither, and raising the conditions of new appropriations of lands.

He has obstructed the administration of justice, by refusing his assent to laws for establishing judiciary powers.

He has made judges dependent on his will alone, for the tenure of their offices, and the amount and payment of their salaries.

He has erected a multitude of new offices, and sent hither swarms of officers to harass our people, and eat out their substance.

He has kept among us, in times of peace, standing armies, without the consent of our legislature.

He has affected to render the military independent of, and superior to, the civil power.

He has combined with others, to subject us to a jurisdiction foreign to our constitution, and unacknowledged by our laws ; giving his assent to their acts of pretended legislation :

For quartering large bodies of armed troops among us :

For protecting them, by a mock trial, from punishment, for any murders which they should commit on the inhabitants of these States :

For cutting off our trade with all parts of the world :

For imposing taxes on us without our consent :

For depriving us, in many cases, of the benefits of trial by jury :

For transporting us beyond seas to be tried for pretended offences :

For abolishing the free system of English laws in a neighboring province, establishing therein an arbitrary government, and enlarging its boundaries, so as to render it at once an example and fit instrument for introducing the same absolute rule into these colonies :

For taking away our charters, abolishing our most valuable laws, and altering, fundamentally, the powers of our governments :

For suspending our own legislatures, and declaring themselves invested with power to legislate for us in all cases whatsoever.

He has abdicated government here, by declaring us out of his protection, and waging war against us.

He has plundered our seas, ravaged our coasts, burnt our towns, and destroyed the lives of our people.

He is, at this time, transporting large armies of foreign mercenaries to complete the works of death, desolation, and tyranny, already begun, with circumstances of cruelty and perfidy scarcely paralleled in the most barbarous ages, and totally unworthy the head of a civilized nation.

He has constrained our fellow-citizens, taken captive on the high seas, to bear arms against their country, to become the executioners of their friends and brethren, or to fall themselves by their hands.

He has excited domestic insurrections amongst us, and has endeavoured to bring on the inhabitants of our frontiers the merciless Indian savages, whose known rule of warfare is an undistinguished destruction of all ages, sexes, and conditions.

In every stage of these oppressions, we have petitioned for redress, in the most humble terms; our repeated petitions have been answered only by repeated injury. A prince, whose character is thus marked by every act which may define a tyrant, is unfit to be the ruler of a free people.

Nor have we been wanting in attention to our British brethren. We have warned them, from time to time, of attempts made by their legislature to extend an unwarrantable jurisdiction over us. We have reminded them of the circumstances of our emigration and settlement here. We have appealed to their native justice and magnanimity, and we have conjured them, by the ties of our common kindred, to disavow these usurpations, which would inevitably interrupt our connection and correspondence. They, too, have been deaf to the voice of justice and consanguinity. We must, therefore, acquiesce in the necessity, which denounces our separation, and hold them, as we hold the rest of mankind, enemies in war, in peace, friends.

We, therefore, the representatives of the UNITED STATES OF AMERICA, in GENERAL CONGRESS assembled, appealing to the Supreme Judge of the World for the rectitude of our intentions, do, in the name, and by the authority of the good people of these colonies, solemnly publish and declare, That these United Colonies are, and of right ought to be, FREE AND INDEPENDENT STATES; that they are absolved from all allegiance to the British crown, and that all political connexion between them and the state of Great Britain, is, and ought to be, totally dissolved; and that, as *FREE AND INDEPENDENT STATES*, they have full power to levy war, conclude peace, contract alliances, establish commerce, and to do all other acts and things which INDEPENDENT STATES may of right do. And, for the support of this declaration, with a firm reliance on the protection of DIVINE PROVIDENCE, we mutually pledge to each other, our lives, our fortunes, and our sacred honour.

The following are the names of the members who signed the Declaration :

John Hancock

Button Gwinnett

Lyman Hall

Geo Walton.

Wm Hooper

Joseph Hewes

John Penn

Edward Rutledge

Thos Heyward Junr

Thomas Lynch Junr

DECLARATION OF INDEPENDENCE.

Arthur Middleton

Samuel Chase
Wm. Paca

Thos Stone

Charles Carroll of Carrollton

George Wythe

Richard Henry Lee

Th: Jefferson

Wm^d Harrison

Thos Nelson jr.

Francis Lightfoot Lee

Carter Braxton

Robt Morris

Benjamin Rush

Ben^a Franklin

John Morton

Geo Lymer
Jas Smith

Geo Taylor

James Wilson

Geo. Ross

Cesar Rodney

Geo. Read

Tho. M. Mifflin

Wm Lloyd

Phil. Livingston

Jaas Lewis

Lewis Morris

Ruh Stockton

~~John~~

Jas Witherspoon

Thos Hopkinson

John Hart

Mora Clark

Josiah Bartlett

Wm Whipple

Sam Adams

John Adams
Robt Grant Paine

Elbridge Gerry

Step. Hopkins
William Ellery
Roger Sherman
Sam^a Huntington

W^m Williams
Oliver Wolcott

Matthew Thornton

CONSTITUTION OF THE UNITED STATES.

When congress appointed a committee to prepare a declaration of independence, it at the same time appointed a committee to prepare a plan of confederation for the colonies. Mr. *Madison* states* that there remains on the files of congress, in the handwriting of Doctor *Franklin*, a sketch submitted by him to that body as early as the 21st of August 1775, entitled, "Articles of Confederation and perpetual union of the Colonies;" and that this sketch became a basis for the articles reported by the committee on the 12th of July 1776, now remaining on the files of congress in the handwriting of Mr. *Dickinson*. The articles so reported were debated and amended from time to time until the 17th of November 1777, when congress determined to propose them to the states. On the 9th of December 1777, the speaker of the house of delegates of *Virginia* laid before the house the proposed articles with an address to the several states on the subject thereof by the president of congress. They are spread at large on the journal of the house, and are also in the first volume of *Hening's Statutes At Large*, page 37 to 47.

On the 15th the house, in committee of the whole, considered the said articles and address, and came to resolutions, which on the same day were agreed to by the house, for approving the articles and instructing the delegates of *Virginia* in congress to ratify the same; the concurrence of the senate in these resolutions was communicated to the house on the 17th. The ratification by the delegates of the several states in congress purports to be signed on the 9th of July 1778; but only eight states had in fact ratified the articles at that time. Two additional states ratified them in the same month, on the 21st and 24th, another on the 26th of November in the same year, another on the 22d of February 1779, and the thirteenth (*Maryland*), ratified them on the 1st of March 1781.

In May 1785, a committee of congress made a report recommending an alteration of the first paragraph of the ninth of the articles of confederation, so as to enlarge the powers of congress, especially as to the regulation of trade,† but congress, without further action, left it to the state legislatures to proceed in the matter. On the last day of the ensuing session of the legislature of *Virginia*, to wit, on the 21st of January 1786, a resolution passed for the appointment of five commissioners, who, or any three of them, should meet such commissioners as might be appointed in the other states of the Union, at a time and place to be agreed on, to take into consideration the trade of the *United States*; to examine the relative situation and trade of said states; to consider how far a uniform system in their commercial regulations may be necessary to their common interest and their permanent harmony; and to report to the several states such an act, relative to this great object, as when unanimously ratified by them, will enable the *United States* in congress, effectually to provide for the same.

The commissioners fixed the first Monday in September as the time, and the city of *Annapolis* as the place for the meeting. *Edmund Randolph*, Mr. *Madison* and *St. George Tucker* then attended on behalf of *Virginia*; only four other states were represented; to wit, *Delaware*, *Pennsylvania*, *New Jersey* and *New York*. Commissioners had been appointed by *New Hampshire*, *Massachusetts*, *Rhode Island* and *North Carolina*, but they failed to attend.

Under the circumstances of so partial a representation, the commissioners present agreed on a report (drawn by Mr. *Hamilton*,) expressing their unanimous conviction that it might essentially tend to advance the interests of the Union, if the states by whom they were respectively delegated would concur, and use their endeavours to procure the concurrence of the other states, in the appointment of commissioners to meet at *Philadelphia* on the second Monday in May following, to take into consideration the situation of the *United States*; to devise such further provisions as should appear to them necessary to render the constitution of the federal government adequate to the exigencies of the Union; and to report such an act for that purpose to the *United States* in congress assembled, as, when agreed to by them and afterwards confirmed by the legislatures of every state, would effectually provide for the same.

* *Madison Papers*, vol. ii. p. 688.

† *Sparks' Writings of Washington*, vol. 9, p. 503 to 506.

The report agreed on by the commissioners at *Annapolis* being laid before the legislature of *Virginia* on the 30th of October 1786, this legislature acted promptly. A bill for the appointment of deputies to the proposed convention was considered by the house of delegates in committee of the whole on the 8th and passed the house on the 9th, and the senate on the 23d of November. This act is in the 12th volume of *Hening's Statutes at Large*, page 256. Under it, on the 4th of December, *George Washington*, *Patrick Henry*, *Edmund Randolph*, *John Blair*, *James Madison*, *George Mason* and *George Wythe*, were appointed deputies, any three of whom were authorized to act. Mr. *Henry* resigned. General *Nelson* being appointed in his place also declined. Mr. *R. H. Lee* was then appointed, but he likewise declined. Doctor *James McClurg* was chosen in his place.*

The act of *Virginia* was succeeded by appointments from other states. On the 21st of February 1787 congress adopted a resolution expressing its opinion in favour of a convention. And as the legislatures assembled, all made appointments, with the exception of the legislature of *Rhode Island*.†

Seven states were not however convened till the 25th of May. Then, by the instruction of the deputation of *Pennsylvania*, *Robert Morris* proposed *George Washington* for president of the convention and he was unanimously elected. As the convention had originated from *Virginia*, the deputies from this state supposed that some proposition was expected from them; and upon consultation it was assigned to Mr. *Randolph* to introduce certain resolutions. By their introduction on the 29th the main business of the convention was opened. Its proceedings terminated on the 17th of September 1787; the constitution as engrossed and agreed upon was then signed by all the members present except Mr. *Randolph* and Mr. *Mason* from *Virginia*, and Mr. *Gerry* from *Massachusetts*.

The following members, who had been in attendance in earlier stages of the convention, seem not to have been present at the time the constitution was signed, to wit: *Caleb Strong* of *Massachusetts*, *Oliver Ellsworth* of *Connecticut*, *Robert Yates* and *John Lansing* of *New York*, *William C. Houston* of *New Jersey*, *John Francis Mercer* and *Luther Martin* of *Maryland*, *George Wythe* and *James McClurg* of *Virginia*, *Alexander Martin* and *William R. Davie* of *North Carolina*, and *William Pierce* and *William Houston* of *Georgia*.‡

The constitution as it was agreed on and signed is as follows :||

ARTICLE I.

Sec. Clause

1. Legislative powers vested in congress.
2. 1. House of representatives; when chosen; qualifications of electors.
2. Qualifications of representative.
3. How representatives and direct taxes are apportioned. Census every ten years. Ratio of representation limited.
4. As to writ of election for filling vacancy in representation.
5. House chooses its officers, and has power of impeachment.
3. 1. Senate; two senators from each state; how chosen.
2. Senators divided into three classes; executive of a state may fill vacancy in recess of legislature.
3. Qualifications of senators.
4. Vice-president is president of senate; votes only on equal division.
5. Senate chooses its officers; when it may choose a president *pro tempore*.
6. Power to try impeachments, in the senate.

Sec. Clause

7. Extent of judgment on impeachment.
4. 1. Time, place and manner of electing senators and representatives; how prescribed.
2. Time for meeting of congress.
5. 1. Each house the judge of election of its own members.
2. Each house to determine its own rules.
3. Each house to keep a journal, and publish it; yeas and nays, when taken.
4. Adjournment of one house by consent of the other.
6. 1. Compensation of members; their privileges.
2. Disability to hold certain offices.
7. 1. Bills to raise revenue; where to originate.
2. Power of the president and congress in enacting laws, and proceedings therein.
3. Same as to resolutions, &c.
8. Power of congress—
1. To lay taxes. Duties to be uniform
2. To borrow money.
3. To regulate commerce.

* *Madison Papers*, vol. 2, p. 643.

† *Madison Papers*, vol. 2, p. 587 to 590, and p. 619. *Sparks's Writings of Washington*, vol. 9, p. 542.

‡ *Madison Papers*, vol. 3, page lxxx. of table.

|| The copy of the constitution from which this is printed is that in the book called "The Constitution," compiled by *W. Hickey*, and recognized as authentic by the senate of the United States.

Sec. Clause

4. To make laws as to naturalization and bankruptcy.
5. To coin money, &c.
6. To punish counterfeiters.
7. To establish post offices.
8. To promote science, &c.
9. To constitute inferior courts.
10. To define and punish certain offences.
11. To declare war, &c.
12. } To raise armies and a navy, and make
13. } rules for them.
14. }
15. To provide for calling forth the militia.
16. To provide for organizing militia, &c.
Rights reserved to states in respect to.
17. Of exclusive legislation of congress in certain places.
18. To make all laws necessary and proper to execute other powers.
9. 1. Migration or importation of certain persons not to be prohibited till 1808.
2. Writ of *habeas corpus* not to be suspended, except in specified cases.
3. No attainder or *ex post facto* law to be passed.
4. Direct taxes to be in proportion to census.
5. } No export duty laid, nor preference
6. } given to any port. Coast trade.
7. Money drawn from treasury only by law. Receipts and expenditures to be published.
8. Titles of nobility not to be granted. Officers of U. S. not to accept presents from foreign state.
10. 1. Powers prohibited to the states.
2. } Powers prohibited to them, without
3. } consent of congress.

ARTICLE II.

1. 1. *Executive* powers vested in a president. Term of office of president and vice-president.
2. Electors of president and vice-president. Number for each state.
3. Meeting of electors, and their proceedings.
4. Congress to prescribe time of choosing electors, and the day they vote.
5. Eligibility to the office of president.
6. Vice-president to act when office of president vacant.
7. Compensation of the president.
8. Oath to be taken by him.

Sec. Clause

2. 1. }
2. } Powers and Duties of the president.
3. }
3. 1. }
4. 1. For what president, vice-president and civil officers shall be removed from office.

ARTICLE III.

1. 1. *Judicial power* vested in one supreme court, &c. Term of office and compensation of judges.
2. 1. Extent of the judicial power.
2. When supreme court has original jurisdiction; when appellate.
3. All crimes to be tried by jury. Where such trials to be.
3. 1. What constitutes treason, and how to be proved.
2. Congress to prescribe punishment of. Not to work corruption of blood, &c.

ARTICLE IV.

1. 1. Credit to be given in one state to public acts, &c. of another.
2. 1. Citizens of each state entitled to privileges, &c. in other states.
2. Fugitives from justice to be delivered up by state in which they may be found.
3. Fugitive slaves to be delivered up.
3. 1. New states may be admitted into the Union.
2. Power of congress over the territory and property of the Union. Claims of the states, &c. not to be prejudiced.
4. 1. Republican form of government guaranteed to each state.

ARTICLE V.

1. 1. Mode of amending the constitution. Proviso respecting power of amendment.

ARTICLE VI.

1. United States bound for debts of the confederation.
2. What is the supreme law of the land.
3. Oath to support the constitution; by whom to be taken.

ARTICLE VII.

1. Ratification of nine states to be sufficient.

WE the People of the United States, in order to form a more perfect Union, establish Justice, insure domestic Tranquillity, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this CONSTITUTION for the United States of America.

ARTICLE I.

SECTION. I. All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

SECTION. II. 1. The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

2. No Person shall be a Representative who shall not have attained to the Age of twenty five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

3. Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons. The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct. The Number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at Least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to chuse three, Massachusetts eight, Rhode-Island and Providence Plantations one, Connecticut five, New-York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

4. When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies.

5. The House of Representatives shall chuse their Speaker and other Officers; and shall have the sole Power of Impeachment.

SECTION. III. 1. The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for six Years; and each Senator shall have one Vote.

2. Immediately after they shall be assembled in Consequence of the first Election, they shall be divided as equally as may be into three Classes. The Seats of the Senators of the first Class shall be vacated at the Expiration of the second Year, of the second Class at the Expiration of the fourth Year, and of the third Class at the Expiration of the sixth Year, so that one-third may be chosen every second Year; and if Vacancies happen by Resignation, or otherwise, during the Recess of the Legislature of any State, the Executive thereof may make temporary Appointments until the next Meeting of the Legislature, which shall then fill such Vacancies.

3. No Person shall be a Senator who shall not have attained to the Age of thirty Years, and been nine Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen.

4. The Vice President of the United States shall be President of the Senate, but shall have no Vote, unless they be equally divided.

5. The Senate shall chuse their other Officers, and also a President pro tempore, in the Absence of the Vice President, or when he shall exercise the Office of President of the United States.

6. The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When

the President of the United States is tried, the Chief Justice shall preside : And no Person shall be convicted without the Concurrence of two thirds of the Members present.

7. Judgment in Cases of Impeachment shall not extend further than to removal from Office, and Disqualification to hold and enjoy any Office of honour, Trust or Profit under the United States : but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law.

SECTION. IV. 1. The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof ; but the Congress may at any time by Law make or alter such Regulations, except as to the places of chusing Senators.

2. The Congress shall assemble at least once in every Year, and such Meeting shall be on the first Monday in December, unless they shall by Law appoint a different Day.

SECTION. V. 1. Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members, and a Majority of each shall constitute a Quorum to do Business ; but a smaller Number may adjourn from day to day, and may be authorized to compel the Attendance of absent Members, in such Manner, and under such Penalties as each House may provide.

2. Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behaviour, and, with the Concurrence of two thirds, expel a Member.

3. Each House shall keep a Journal of its Proceedings, and from time to time publish the same, excepting such Parts as may in their Judgment require Secrecy ; and the Yeas and Nays of the Members of either House on any question shall, at the Desire of one fifth of those Present, be entered on the Journal.

4. Neither House, during the Session of Congress, shall, without the Consent of the other, adjourn for more than three days, nor to any other Place than that in which the two Houses shall be sitting.

SECTION. VI. 1. The Senators and Representatives shall receive a Compensation for their Services, to be ascertained by Law, and paid out of the Treasury of the United States. They shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same ; and for any Speech or Debate in either House, they shall not be questioned in any other Place.

2. No Senator or Representative shall, during the Time for which he was elected, be appointed to any civil Office under the Authority of the United States, which shall have been created, or the Emoluments whereof shall have been encreased during such time ; and no Person holding any Office under the United States, shall be a Member of either House during his Continuance in Office.

SECTION. VII. 1. All Bills for raising Revenue shall originate in the House of Representatives ; but the Senate may propose or concur with Amendments as on other Bills.

2. Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the Presi-

dent of the United States; If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law. But in all such Cases the Votes of both Houses shall be determined by yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law.

3. Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill.

SECTION. VIII. The Congress shall have Power

1. To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

2. To borrow Money on the credit of the United States;

3. To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

4. To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States;

5. To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;

6. To provide for the Punishment of counterfeiting the Securities and current Coin of the United States;

7. To establish Post Offices and post Roads;

8. To promote the progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;

9. To constitute Tribunals inferior to the supreme Court;

10. To define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations;

11. To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;

12. To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;

13. To provide and maintain a Navy;

14. To make Rules for the Government and Regulation of the land and naval Forces;

15. To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;

16. To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the Discipline prescribed by Congress;

17. To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, Dock-Yards, and other needful Buildings;—And

18. To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

SECTION. IX. 1. The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a Tax or Duty may be imposed on such Importation, not exceeding ten dollars for each Person.

2. The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

3. No Bill of Attainder or ex post facto Law shall be passed.

4. No Capitation, or other direct, Tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken.

5. No Tax or Duty shall be laid on Articles exported from any State.

6. No Preference shall be given by any Regulation of Commerce or Revenue to the Ports of one State over those of another: nor shall Vessels bound to, or from, one State, be obliged to enter, clear, or pay Duties in another.

7. No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.

8. No Title of Nobility shall be granted by the United States: And no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State.

SECTION. X. 1. No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

2. No State shall, without the consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing it's inspection Laws: and the net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Controul of the Congress.

3. No State shall, without the Consent of Congress, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of Delay.

ARTICLE. II.

SECTION. I. 1. The executive Power shall be vested in a President of the United States of America. He shall hold his Office during the Term of four Years, and, together with the Vice President, chosen for the same Term, be elected, as follows

2. Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector.

3.* The Electors shall meet in their respective States, and vote by Ballot for two Persons, of whom one at least shall not be an Inhabitant of the same State with themselves. And they shall make a list of all the Persons voted for, and of the number of votes for each; which List they shall sign and certify, and transmit sealed to the Seat of the Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the Presence of the Senate and House of Representatives, open all the Certificates, and the Votes shall then be counted. The Person having the greatest number of Votes shall be the President, if such a Number be a Majority of the whole Number of Electors appointed; and if there be more than one who have such Majority, and have an equal Number of Votes, then the House of Representatives shall immediately chuse by Ballot one of them for President; and if no Person have a Majority, then from the five highest on the List the said House shall in like Manner chuse the President. But in chusing the President, the Votes shall be taken by States, the Representation from each State having one Vote: A Quorum for this Purpose shall consist of a Member or Members from twothirds of the States, and a Majority of all the States shall be necessary to a Choice. In every Case, after the Choice of the President, the Person having the greatest Number of Votes of the Electors shall be the Vice President. But if there should remain two or more who have equal Votes, the Senate shall chuse from them by Ballot the Vice President.

4. The Congress may determine the Time of chusing the Electors, and the Day on which they shall give their Votes; which day shall be the same throughout the United States.

5. No Person except a natural born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of President; neither shall any Person be eligible to that Office who shall not have attained to the Age of thirty-five Years, and been fourteen Years a Resident within the United States.

6. In Case of the Removal of the President from Office, or of his Death, Resignation, or Inability to discharge the Powers and Duties of

* This 3d clause (of the 1st section of article 2d) has been superseded by the 12th amendment. Vid. post. p. 31.

the said Office, the same shall devolve on the Vice President, and the Congress may by Law provide for the Case of Removal, Death, Resignation, or Inability, both of the President and Vice President, declaring what Officer shall then act as President, and such Officer shall act accordingly, until the Disability be removed, or a President shall be elected.

7. The President shall, at stated Times, receive for his Services, a Compensation, which shall neither be encreased nor diminished during the Period for which he shall have been elected, and he shall not receive within that Period any other Emolument from the United States, or any of them.

8. Before he enter on the Execution of his Office, he shall take the following Oath or Affirmation:—

“I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my Ability, preserve, protect and defend the Constitution of the United States.”

SECTION. II. 1. The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; he may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices, and he shall have Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment.

2. He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

3. The President shall have Power to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next Session.

SECTION. III. He shall from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient; he may, on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to the Time of Adjournment, he may adjourn them to such Time as he shall think proper: he shall receive Ambassadors and other public Ministers; he shall take Care that the Laws be faithfully executed, and shall Commission all the officers of the United States.

SECTION. IV. The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.

ARTICLE III.

SECTION. I. The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behavior, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

SECTION. II. 1. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers, and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State;—between Citizens of different States,—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

2. In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be a Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

3. The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

SECTION. III. 1. Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.

2. The Congress shall have Power to declare the Punishment of Treason, but no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person attainted.

ARTICLE. IV.

SECTION. I. Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

SECTION. II. 1. The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

2. A Person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime.

3. No Person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due.

SECTION. III. 1. New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or Parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress.

2. The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.

SECTION. IV. The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.

ARTICLE. V.

The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year one thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate.

ARTICLE. VI.

1. All Debts contracted and Engagements entered into, before the Adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

2. This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

3. The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

ARTICLE. VII.

The Ratification of the Conventions of nine States, shall be sufficient for the Establishment of this Constitution between the States so ratifying the Same.

DONE in Convention by the Unanimous Consent of the States present the Seventeenth Day of September in the Year of our Lord one thousand seven hundred and Eighty seven and of the Independance of the United States of America the Twelfth IN WITNESS whereof We have hereunto subscribed our Names,

*G. Washington Presid.
and Deputy from Virginia*

*John Langdon
Nicholas Gilman*

*Nathanial Gorham
Rufus King*

*W^m Sam^l Johnson
Roger Sherman*

Alexander Hamilton

W^l. Livingston
David Brearley.

J^m Paterson.

Jona: Dayton

B Franklin
Thomas A. Mifflin
Robt Morris

Geo Clymer
Tho: Fitzsimons
Jared Ingersoll
James Wilson.
Gould Moore

Geo. Read
 Canning Medford jun
 John Dickinson
 Richard Bassett
 Jas. Broom

James M. Henry
 Danl. T. Senifer
 Danl. Carroll

John Blair -
 James Madison Jr.

Wm. Blount
 Richd. Dobbs Speight.
 A. Williamson

J. Rutledge
Charles Cotesworth Pinckney
Charles Pinckney
Pissu Pitti!

William Few
Abr Baldwin

Attest William Jackson
Secretary

RATIFICATION

OF THE

CONSTITUTION OF THE UNITED STATES.

THE convention which framed the Constitution of the *United States*, adopted on the 17th of September 1787, the following resolutions :

Resolved, That the preceding Constitution be laid before the United States in Congress assembled, and that it is the opinion of this convention that it should afterwards be submitted to a convention of delegates, chosen in each State by the people thereof, under the recommendation of its legislature, for their assent and ratification ; and that each convention, assenting to and ratifying the same, should give notice thereof, to the United States in Congress assembled.

Resolved, That it is the opinion of this convention, that as soon as the conventions of nine States shall have ratified this Constitution, the United States in Congress assembled should fix a day on which electors should be appointed by the States which shall have ratified the same, and a day on which the electors should assemble to vote for the President, and the time and place for commencing proceedings under this Constitution ; that after such publication the electors should be appointed, and the Senators and Representatives elected ; that the electors should meet on the day fixed for the election of the President, and should transmit their votes certified, signed, sealed, and directed, as the Constitution requires, to the Secretary of the United States in Congress assembled ; that the Senators and Representatives should convene at the time and place assigned ; that the Senators should appoint a president of the Senate, for the sole purpose of receiving, opening, and counting the votes for President ; and that, after he shall be chosen, the Congress, together with the President, should without delay proceed to execute this Constitution.

The following letter was also agreed to :

IN CONVENTION, SEPTEMBER 17, 1787.

SIR : We have now the honor to submit to the consideration of the United States in Congress assembled, that Constitution which has appeared to us the most advisable.

The friends of our country have long seen and desired that the power of making war, peace, and treaties, that of levying money and regulating commerce, and the correspondent executive and judicial authorities, should be fully and effectually vested in the General Government of the Union ; but the impropriety of delegating such extensive trust to one body of men is evident ; hence results the necessity of a different organization.

It is obviously impracticable, in the Federal Government of these States, to secure all rights of independent sovereignty to each, and yet provide for the interest and safety of all. Individuals entering into society must give up a share of liberty to preserve the rest. The magnitude of the sacrifice must depend as well on situation and circumstance as on the object to be obtained. It is at all times difficult to draw with precision the line between those rights which must be surrendered and those which may be reserved; and on the present occasion this difficulty was increased by a difference among the several States as to their situation, extent, habits, and particular interests.

In all our deliberations on this subject, we kept steadily in our view that which appears to us the greatest interest of every true American—the consolidation of our Union—in which is involved our prosperity, felicity, safety, perhaps our national existence. This important consideration, seriously and deeply impressed on our minds, led each State in the convention to be less rigid on points of inferior magnitude than might have been otherwise expected; and thus the Constitution which we now present is the result of a spirit of amity, and of that mutual deference and concession which the peculiarity of our political situation rendered indispensable.

That it will meet the full and entire approbation of every State, is not perhaps to be expected; but each will doubtless consider that, had her interest been alone consulted, the consequences might have been particularly disagreeable or injurious to others; that it is liable to as few exceptions as could reasonably have been expected, we hope and believe; that it may promote the lasting welfare of that country so dear to us all, and secure her freedom and happiness, is our most ardent wish.

With great respect, we have the honor to be, sir, your excellency's most obedient humble servants.

By unanimous order of the convention.

GEORGE WASHINGTON, *President.*

His Excellency the President of Congress.

In congress, on the 28th of September 1787, a resolution was adopted, directing the constitution so framed, with the resolutions and letter accompanying the same, to "be transmitted to the several legislatures in order to be submitted to a convention of delegates chosen in each state by the people thereof, in conformity to the resolves of the convention."*

When the general assembly of *Virginia* met on the 15th of October 1787, the speaker of the house of delegates laid before the house a letter from the governor, stating matters for the consideration of the assembly and referring to sundry letters and papers enclosed. On the next day so much of the enclosures as contained the report of the federal convention was referred to a committee of the whole. On the 25th, the house in committee resolved that the proceedings of the federal convention ought to be submitted to a convention of the people for their full and free investigation and discussion; that every citizen being a freeholder ought to be eligible to a seat in the convention; and that the people thereof ought not to be restrained in their choice of delegates by any of those legal or constitutional restrictions which confine them in their choice of members to the legislature; that it be recommended to each county to elect two delegates, and to each city, town or corporation entitled to representation in the legislature to elect one delegate, to the convention; and that the quali-

* Madison Papers, vol. 2, p. 643 to 646.

fications of the electors be the same with those established by law. These resolutions, with others as to the mode of conducting the elections, the times and places thereof, and for the convention to meet, and the printing and distributing copies of the resolutions, were adopted by the house on the same day; and on the 31st the senate agreed thereto with amendments, and the house concurred in those amendments. The convention met on the 2d of June 1788, and appointed *Edmund Pendleton* president and *John Beckley* secretary; on the 25th it resolved that the constitution be ratified, and that whatsoever amendments may be deemed necessary be recommended to the consideration of the congress which shall first assemble under the said constitution, to be acted upon according to the mode prescribed in the fifth article thereof. Gov. *Randolph* reported from a committee appointed for the purpose, a form of ratification, which was agreed to by the convention, in the words following:

Virginia, to wit:

We the delegates of the people of Virginia, duly elected in pursuance of a recommendation from the general assembly, and now met in convention, having fully and freely investigated and discussed the proceedings of the Federal Convention, and being prepared as well as the most mature deliberation hath enabled us, to decide thereon, Do, in the name and in behalf of the people of Virginia, declare and make known, that the powers granted under the constitution, being derived from the people of the United States, may be resumed by them whensoever the same shall be perverted to their injury or oppression, and that every power not granted thereby, remains with them and at their will; that therefore no right, of any denomination, can be cancelled, abridged, restrained or modified, by the congress, by the senate or house of representatives acting in any capacity, by the president or any department, or officer of the United States, except in those instances in which power is given by the constitution for those purposes; and that among other essential rights, the liberty of conscience and of the press cannot be cancelled, abridged, restrained or modified by any authority of the United States.

With these impressions, with a solemn appeal to the Searcher of Hearts for the purity of our intentions, and under the conviction that whatsoever imperfections may exist in the constitution ought rather to be examined in the mode prescribed therein, than to bring the Union into danger by delay, with a hope of obtaining amendments, previous to the ratification:

We the said Delegates, in the name and in behalf of the people of Virginia, do by these presents assent to and ratify the constitution recommended on the 17th day of September, one thousand seven hundred and eighty-seven, by the Federal Convention, for the government of the United States; hereby announcing to all those whom it may concern, that the said constitution is binding upon the said people, according to an authentic copy hereto annexed.

Of this form of ratification two copies were engrossed, and by order of the convention signed by its president, one on the 26th, the other on the 27th of June; the first of the copies was ordered to be transmitted by him to congress, the second to be deposited by the secretary in the archives of the general assembly of this state.

The constitution had before been ratified by *Delaware* on the 7th of December 1787, *Pennsylvania* on the 12th of December 1787, *New Jersey* the 18th of December 1787, *Georgia* the 2d of January 1788, *Connecticut* the 9th of January 1788, *Massachusetts* the 6th of February 1788, *Maryland* the 28th of April 1788, *South Carolina* the 23d of May 1788, and *New Hampshire* the 21st of June 1788. It was afterwards ratified by *New York* the 26th of July 1788, *North Carolina* the 21st of November 1789, and *Rhode Island* the 29th of May 1790.

On the 13th of September 1788, congress adopted the following preamble and resolution :

Whereas the convention assembled in Philadelphia, pursuant to the resolution of Congress of the 21st of February 1787, did, on the 17th of September in the same year, report to the United States in Congress assembled a Constitution for the people of the United States; whereupon Congress, on the 28th of the same September, did resolve, unanimously : " That the said report, with the resolutions and letter accompanying the same, be transmitted to the several legislatures, in order to be submitted to a convention of delegates, chosen in each state by the people thereof, in conformity to the resolves of the convention made and provided in that case : " And whereas the Constitution so reported by the convention, and by congress transmitted to the several legislatures, has been ratified in the manner therein declared to be sufficient for the establishment of the same, and such ratifications, duly authenticated, have been received by Congress, and are filed in the office of the Secretary ; therefore,—

Resolved, That the first Wednesday in January next be the day for appointing electors in the several states, which, before the said day, shall have ratified the said constitution ; that the first Wednesday in February next be the day for the electors to assemble in their respective states, and vote for a president ; and that the first Wednesday in March next be the time, and the present seat of Congress (New York) the place, for commencing the proceedings under the said constitution.*

The congress, under the articles of confederation, continued to act as a government until it dissolved on the first of November 1788 by the successive disappearance of its members.† The operation of the government, under the constitution for the United States, did not commence before the first Wednesday in March 1789.‡

AMENDMENTS

TO THE

CONSTITUTION OF THE UNITED STATES.

After the convention of *Virginia*, on the 25th of June 1788, ratified the constitution of the *United States*, it appointed a committee to prepare and report such amendments as they should deem necessary to be recommended. On the 17th the committee reported amendments, which the convention concurred in proposing, and ordered to be transmitted, with the ratification of the constitution, to congress.

The conventions of other states, having also, at the time of their adopting the constitution, expressed a desire, in order to prevent misconstruction or abuse of its powers, that further declaratory and restrictive clauses should be added, congress, at the session commenced in *New York* the fourth of March 1789, proposed certain articles to the legislatures of the several states as amendments to the constitution of the

* See Journal ; also Sparks's Writings of Washington, vol. 9, p. 551, 2, and 554.

† 5 Wheat. 422. ‡ 5 Wheat. 423.

United States; ten of which were ratified by the states as follows, to wit: *New Jersey* the 20th of November 1789, *Maryland* the 19th of December 1789, *North Carolina* the 22d of December 1789, *South Carolina* the 19th of January 1790, *New Hampshire* the 25th of January 1790, *Delaware* the 28th of January 1790, *Pennsylvania* the 10th of March 1790, *New York* the 27th of March 1790, *Rhode Island* the 15th of June 1790, *Vermont* the 3d of November 1791, and *Virginia* the first on that day, and the other nine on the 15th of December 1791. These ten articles constitute the first ten amendments to the constitution. Congress on the 5th of March 1794, proposed a further article to the legislatures of the states, which was ratified by *Virginia* on the 18th of November 1794, and was declared in a message from the president of the *United States* to both houses of congress, dated the 8th of January 1798, to have been adopted by the constitutional number of states. And on the 12th of December 1803, it proposed, in lieu of the third paragraph of the first section of the second article of the constitution, a twelfth amendment which was ratified by *Virginia* on the 31st of that month, and adopted by the constitutional number of states in 1804, according to a public notice thereof by the secretary of state, dated the 25th of September of that year.

In the Code of 1819, there is published amongst the amendments to the constitution of the *United States*, a thirteenth article; but this, though proposed as an amendment, does not appear to have been ratified by the requisite number of states. The twelve amendments, which have been ratified, are as follows:

ARTICLE I.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

ARTICLE II.

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

ARTICLE III.

No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

ARTICLE IV.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

ARTICLE V.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any Criminal Case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

ARTICLE VI.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have Compulsory process for obtaining Witnesses in his favour, and to have the Assistance of Counsel for his defence.

ARTICLE VII.

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

ARTICLE VIII.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

ARTICLE IX.

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

ARTICLE X.

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

ARTICLE XI.

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

ARTICLE XII.

The Electors shall meet in their respective states, and vote by ballot for President and Vice President, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate;—The President of the Senate shall, in presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted;—The person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of Electors appointed; and if no person have such majority, then from the persons having the

highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice President shall act as President, as in the case of the death or other constitutional disability of the President. The person having the greatest number of votes as Vice President, shall be the Vice President, if such number be a majority of the whole number of Electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice President of the United States.

VIRGINIA BILL OF RIGHTS.

When, on the 15th of May 1776, the Convention of *Virginia* instructed their delegates in Congress to propose to that body to declare the United Colonies free and independent States, it, at the same time, appointed a committee to prepare a declaration of rights and such a plan of government as would be most likely to maintain peace and order in the Colony and secure substantial and equal liberty to the people. On subsequent days the committee was enlarged; Mr. *George Mason* was added to it on the 18th. The declaration of rights was on the 27th reported by Mr. *Archibald Cary*, the chairman of the committee, and, after being twice read, was ordered to be printed for the perusal of members. It was considered in committee of the whole on the 29th of May and the 3d, 4th, 5th and 10th of June. It was then reported to the house with amendments. On the 11th the convention considered the amendments, and having agreed thereto, ordered that the declaration (with the amendments) be fairly transcribed and read a third time. This having been done on the 12th, the declaration was then read a third time and passed *nem. con.* A manuscript copy of the first draft of the declaration, just as it was drawn by Mr. *Mason*,* is in the library of *Virginia*. The declaration as it passed is as follows:

A Declaration of Rights made by the Representatives of the good people of VIRGINIA, assembled in full and free Convention, which rights do pertain to them and their posterity as the basis and foundation of government.

1. That all men are by nature equally free and independent, and have certain inherent rights, of which, when they enter into a state of society, they cannot, by any compact, deprive or divest their posterity; namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety.

2. That all power is vested in, and consequently derived from, the people; that Magistrates are their trustees and servants, and at all times amenable to them.

* Va. Hist. Reg. Jan. 1849, p. 29.

3. That government is, or ought to be, instituted for the common benefit, protection and security of the people, nation, or community : of all the various modes and forms of government, that is best, which is capable of producing the greatest degree of happiness and safety, and is most effectually secured against the danger of mal-administration ; and that, when any government shall be found inadequate or contrary to these purposes, a majority of the community hath an indubitable, unalienable, and indefeasible right, to reform, alter, or abolish it, in such manner as shall be judged most conducive to the public weal.

4. That no man, or set of men, are entitled to exclusive or separate emoluments or privileges from the community, but in consideration of public services ; which not being descendible, neither ought the offices of Magistrate, Legislator, or Judge, to be hereditary.

5. That the legislative and executive powers of the state should be separate and distinct from the judiciary ; and that the members of the two first may be restrained from oppression, by feeling and participating the burthens of the people, they should, at fixed periods, be reduced to a private station, return into that body from which they were originally taken, and the vacancies be supplied by frequent, certain, and regular elections, in which all, or any part of the former members, to be again eligible, or ineligible, as the laws shall direct.

6. That elections of members to serve as representatives of the people, in Assembly, ought to be free ; and that all men, having sufficient evidence of permanent common interest with, and attachment to, the community, have the right of suffrage, and cannot be taxed or deprived of their property for public uses, without their own consent, or that of their representatives so elected, nor bound by any law to which they have not, in like manner, assented, for the public good.

7. That all power of suspending laws, or the execution of laws, by any authority, without consent of the representatives of the people, is injurious to their rights, and ought not to be exercised.

8. That, in all capital or criminal prosecutions, a man hath a right to demand the cause and nature of his accusation, to be confronted with the accusers and witnesses, to call for evidence in his favour, and to a speedy trial by an impartial jury of his vicinage, without whose unanimous consent he cannot be found guilty ; nor can he be compelled to give evidence against himself ; that no man be deprived of his liberty, except by the law of the land or the judgment of his peers.

9. That excessive bail ought not to be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

10. That general warrants, whereby an officer or messenger may be commanded to search suspected places without evidence of a fact committed, or to seize any person or persons not named, or whose offence is not particularly described and supported by evidence, are grievous and oppressive, and ought not to be granted.

11. That, in controversies respecting property, and in suits between man and man, the ancient trial by jury is preferable to any other, and ought to be held sacred.

12. That the freedom of the press is one of the great bulwarks of liberty, and can never be restrained but by despotic governments.

13. That a well regulated militia, composed of the body of the people,

trained to arms, is the proper, natural and safe defence of a free state; that standing armies, in time of peace, should be avoided, as dangerous to liberty; and that in all cases, the military should be under strict subordination to, and governed by, the civil power.

14. That the people have a right to uniform government; and therefore, that no government separate from, or independent of, the government of *Virginia*, ought to be erected or established within the limits thereof.

15. That no free government, or the blessing of liberty, can be preserved to any people, but by a firm adherence to justice, moderation, temperance, frugality, and virtue, and by a frequent recurrence to fundamental principles.

16. That religion, or the duty which we owe to our Creator, and the manner of discharging it, can be directed only by reason and conviction, not by force or violence; and therefore all men are equally entitled to the free exercise of religion, according to the dictates of conscience; and that it is the mutual duty of all to practise Christian forbearance, love, and charity towards each other.

CONSTITUTION OF VIRGINIA.

Mr. *Archibald Cary*, from the committee appointed for the purpose, reported on the 24th of June 1776 a plan of government for the colony. It was then read the first time, read a second time on the 26th, and considered in committee of the whole on that day and on the 27th and 28th. It was then reported to the house with amendments, which were read twice and agreed to. After being fairly transcribed, it was read a third time on the 29th and passed unanimously.*

This constitution or form of government was originally drawn up by *George Mason*.† Mr. *Jefferson* had put a draft of one into the hands of Mr. *Wythe*, who reached *Williamsburg* after the other was committed to the committee of the whole. Two or three parts of Mr. *Jefferson's* plan were, with little alteration, inserted in the other; and his preamble was also adopted.‡

The constitution so resolved upon may be seen in the 9th volume of *Hening's Statutes at Large*, page 112 to 119, and in the editions of the Code of *Virginia* published from 1776 to 1819. At the end of it, in the Code of 1819, will be seen a note of Mr. *Leigh* as to the form of the colonial government for which it was substituted. This constitution was in force until superseded by the amended constitution or form of government for *Virginia*, which, on the 15th of January 1830, was submitted and proposed to the people of *Virginia* by their delegates and representatives, in convention assembled. The amended Constitution is as follows:

ARTICLE I.

Sec.

1. Declaration of rights to be prefixed.

ARTICLE II.

1. Legislative, executive and judiciary departments to be separate.

ARTICLE III.

Sec.

1. General assembly; how formed.
2. House of delegates. Members, how chosen.
3. Senate divided into classes; districts constituted.
4. When and how re-apportionment of representation made.

* Journal of the Convention.

† Mr. Madison's letter in Sparks's Writings of Washington, vol. 9, p. 548.

‡ Mr. Wythe's letter of the 27th of July 1776 to Mr. Jefferson. Burke's Va., vol. 4. p. 150, 151.

Sec.

5. When and how number of members may be increased by re-apportionment.
6. How representation in congress shall be apportioned.
7. Qualification of members of assembly; who disqualified.
8. Compensation of members. Ineligible to office in certain cases.
9. When general assembly shall meet. Powers of each house. Governor to issue writs of election to fill vacancies in the recess.
10. All laws to originate in the house of delegates. Senate may amend.
11. Writ of *habeas corpus* not to be suspended. Legislative power restrained in certain cases. Freedom of speech and of the press. Religious liberty.
12. Legislature may attach disqualification to office to the offence of duelling.
13. How impeachments prosecuted. Extent of judgment therein.
14. Right of suffrage.
15. In all elections votes to be *viva voce*.

ARTICLE IV.

1. Chief executive power vested in a governor. When and how chosen. His term of office. Ineligible for three years.
2. Qualifications for governor.
3. His compensation.
4. Power and duty of governor.
5. Council of state; how chosen; term of office. Their powers and duties. Senior councillor to be lieutenant governor.
6. Militia officers; how appointed.

Sec.

7. Commissions and grants to be in the name of the commonwealth. How to bear *teste*.

ARTICLE V.

1. How and in whom judicial power vested. Jurisdiction of courts and judges; how regulated. Term of office of judges. Judges to hold no other office.
2. Judge not to be deprived of his office by abolishing his court, unless by vote of two thirds of each house.
3. When offices of judges existing at the adoption of the constitution, ceased.
4. How the judges are elected.
5. Of their salaries.
6. How judges may be removed from office.
7. How justices to be appointed.
8. Appointment of attorney-general; tenure of office. Clerks of courts, sheriffs, coroners and constables; how appointed. Their fees.
9. Writs to run in the name of the commonwealth; how to bear *teste*. Conclusion of indictments.

ARTICLE VI.

1. How a treasurer shall be appointed.

ARTICLE VII.

1. Governor and council, and all persons in office when constitution adopted, how long to remain in office. Jurisdiction of existing courts continued until new judicial system organized.

WHEREAS the delegates and representatives of the good people of *Virginia*, in convention assembled, on the twenty-ninth day of June, in the year of our Lord one thousand seven hundred and seventy-six: reciting and declaring, that whereas, *George* the Third, king of *Great Britain* and *Ireland*, and elector of *Hanover*, before that time entrusted with the exercise of the kingly office in the government of *Virginia*, had endeavored to pervert the same into a detestable and insupportable tyranny, by putting his negative on laws the most wholesome and necessary for the public good; by denying his governors permission to pass laws of immediate and pressing importance, unless suspended in their operation for his assent, and when so suspended neglecting to attend to them for many years; by refusing to pass certain other laws, unless the persons to be benefitted by them would relinquish the inestimable right of representation in the legislature; by dissolving legislative assemblies repeatedly and continually, for opposing with manly firmness his invasions of the rights of the people; when dissolved, by refusing to call others for a long space of time, thereby leaving the political system without any legislative head; by endeavouring to prevent the population of our country, and for that purpose obstructing the laws for the naturalization of foreigners; by keeping among us, in time of peace, standing armies and ships of war; by affecting to render the military independent of and superior to the civil power; by combining with others to subject us to a foreign jurisdiction, giving his assent to their pretended acts of legislation, for quartering large bodies of armed troops among us, for

cutting off our trade with all parts of the world, for imposing taxes on us without our consent, for depriving us of the benefits of the trial by jury, for transporting us beyond seas to be tried for pretended offences, for suspending our own legislatures and declaring themselves invested with power to legislate for us in all cases whatsoever; by plundering our seas, ravaging our coasts, burning our towns, and destroying the lives of our people; by inciting insurrections of our fellow-subjects with the allurements of forfeiture and confiscation; by prompting our negroes to rise in arms among us, those very negroes, whom by an inhuman use of his negative he had refused us permission to exclude by law; by endeavouring to bring on the inhabitants of our frontiers the merciless Indian savages, whose known rule of warfare is an undistinguished destruction of all ages, sexes and conditions of existence; by transporting hither a large army of foreign mercenaries, to complete the work of death, desolation and tyranny, then already begun with circumstances of cruelty and perfidy unworthy the head of a civilized nation; by answering our repeated petitions for redress with a repetition of injuries; and finally, by abandoning the helm of government, and declaring us out of his allegiance and protection; by which several acts of misrule, the government of this country, as before exercised under the crown of *Great Britain*, was totally dissolved: did, therefore, having maturely considered the premises, and viewing with great concern the deplorable condition to which this once happy country would be reduced, unless some regular adequate mode of civil polity should be speedily adopted, and in compliance with the recommendation of the general congress, ordain and declare a form of government of *Virginia*:

And whereas the general assembly of *Virginia*, by an act passed on the tenth day of February, in the year of our Lord one thousand eight hundred and twenty-nine, entitled, an act to organize a convention, did authorize and provide for the election, by the people, of delegates and representatives, to meet and assemble, in general convention, at the capitol in the city of *Richmond*, on the first Monday in October in the year last aforesaid, to consider, discuss and propose, a new constitution, or alterations and amendments of the existing constitution of this commonwealth, to be submitted to the people and to be by them ratified or rejected:

We, therefore, the delegates and representatives of the good people of *Virginia*, elected and in convention assembled, in pursuance of the said act of assembly, do submit and propose to the people, the following Amended Constitution and Form of Government for this Commonwealth, that is to say:

ARTICLE I.

The declaration of rights made on the 12th June 1776, by the representatives of the good people of *Virginia* assembled in full and free convention, which pertained to them and their posterity, as the basis and foundation of government, requiring in the opinion of this convention no amendment, shall be prefixed to this constitution, and have the same relation thereto as it had to the former constitution of this commonwealth.

ARTICLE II.

The legislative, executive and judiciary departments shall be separate and distinct, so that neither exercise the powers properly belonging to either of the others; nor shall any person exercise the powers of more than one of them at the same time, except that the justices of the county courts shall be eligible to either house of assembly.

ARTICLE III.

1. The legislature shall be formed of two distinct branches, which together shall be a complete legislature, and shall be called the General Assembly of Virginia.

2. One of these shall be called the House of Delegates, and shall consist of one hundred and thirty-four members, to be chosen, annually, for and by the several counties, cities, towns and boroughs of the commonwealth; whereof thirty-one delegates shall be chosen for and by the twenty-six counties lying west of the Alleghany mountains; twenty-five for and by the fourteen counties lying between the Alleghany and Blue Ridge of mountains; forty-two for and by the twenty-nine counties lying east of the Blue Ridge of mountains and above tide-water; and thirty-six for and by the counties, cities, towns and boroughs lying upon tide-water, that is to say: Of the twenty-six counties lying west of the Alleghany, the counties of Harrison, Montgomery, Monongalia, Ohio and Washington, shall each elect two delegates; and the counties of Brooke, Cabell, Grayson, Greenbrier, Giles, Kanawha, Lee, Lewis, Logan, Mason, Monroe, Nicholas, Pocahontas, Preston, Randolph, Russell, Scott, Tazewell, Tyler, Wood and Wythe, shall each elect one delegate. Of the fourteen counties lying between the Alleghany and Blue Ridge, the counties of Frederick and Shenandoah, shall each elect three delegates; the counties of Augusta, Berkeley, Botetourt, Hampshire, Jefferson, Rockingham and Rockbridge, shall each elect two delegates; and the counties of Alleghany, Bath, Hardy, Morgan and Pendleton, shall each elect one delegate. Of the twenty-nine counties lying east of the Blue Ridge and above tide-water, the county of Loudoun shall elect three delegates; the counties of Albemarle, Bedford, Brunswick, Buckingham, Campbell, Culpeper, Fauquier, Franklin, Halifax, Mecklenburg and Pittsylvania, shall each elect two delegates; and the counties of Amelia, Amherst, Charlotte, Cumberland, Dinwiddie, Fluvanna, Goochland, Henry, Louisa, Lunenburg, Madison, Nelson, Nottoway, Orange, Patrick, Powhatan and Prince Edward, shall each elect one delegate. And of the counties, cities towns and boroughs lying on tide-water, the counties of Accomack and Norfolk shall each elect two delegates; the counties of Caroline, Chesterfield, Essex, Fairfax, Greenesville, Gloucester, Hanover, Henrico, Isle of Wight, King & Queen, King William, King George, Nansemond, Northumberland, Northampton, Princess Anne, Prince George, Prince William, Southampton, Spottsylvania, Stafford, Sussex, Surry and Westmoreland, and the city of Richmond, the borough of

Norfolk, and the town of Petersburg, shall each elect one delegate; the counties of Lancaster and Richmond shall together elect one delegate; the counties of Matthews and Middlesex shall together elect one delegate; the counties of Elizabeth City and Warwick shall together elect one delegate; the counties of James City and York, and the city of Williamsburg, shall together elect one delegate; and the counties of New Kent and Charles City shall together elect one delegate.

3. The other house of the general assembly shall be called the Senate, and shall consist of thirty-two members, of whom thirteen shall be chosen for and by the counties lying west of the Blue Ridge of mountains, and nineteen for and by the counties, cities, towns and boroughs lying east thereof; and for the election of whom the counties, cities, towns and boroughs shall be divided into thirty-two districts, as hereinafter provided. Each county of the respective districts, at the time of the first election of its delegate or delegates under this constitution, shall vote for one senator; and the sheriffs or other officers holding the election for each county, city, town or borough, within five days at farthest after the last county, city, town or borough election in the district, shall meet at some convenient place, and from the polls so taken in their respective counties, cities, towns or boroughs, return as a senator the person who shall have the greatest number of votes in the whole district. To keep up this assembly by rotation, the districts shall be equally divided into four classes, and numbered by lot. At the end of one year after the first general election, the eight members elected by the first division shall be displaced, and the vacancies thereby occasioned supplied from such class or division by new election in the manner aforesaid. This rotation shall be applied to each division according to its number, and continued in due order annually. And for the election of senators, the counties of Brooke, Ohio and Tyler shall form one district; the counties of Monongalia, Preston and Randolph shall form another district; the counties of Harrison, Lewis and Wood shall form another district; the counties of Kanawha, Mason, Cabell, Logan and Nicholas shall form another district; the counties of Greenbrier, Monroe, Giles and Montgomery shall form another district; the counties of Tazewell, Wythe and Grayson shall form another district; the counties of Washington, Russell, Scott and Lee shall form another district; the counties of Berkeley, Morgan and Hampshire shall form another district; the counties of Frederick and Jefferson shall form another district; the counties of Shenandoah and Hardy shall form another district; the counties of Rockingham and Pendleton shall form another district; the counties of Augusta and Rockbridge shall form another district; the counties of Alleghany, Bath, Pocahontas and Botetourt shall form another district; the counties of Loudoun and Fairfax shall form another district; the counties of Fauquier and Prince William shall form another district; the counties of Stafford, King George, Westmoreland, Richmond, Lancaster and Northumberland shall form another district; the counties of Culpeper, Madison and Orange shall form another district; the counties of Albemarle, Nelson and Amherst shall form another district; the counties of Fluvanna, Goochland, Louisa and Hanover shall form another district; the counties of Spottsylvania, Caroline and Essex shall form another district; the counties of

King & Queen, King William, Gloucester, Matthews and Middlesex, shall form another district; the counties of Accomack, Northampton, Elizabeth City, York and Warwick, and the City of Williamsburg, shall form another district; the counties of Charles City, James City, New Kent and Henrico, and the City of Richmond, shall form another district; the counties of Bedford and Franklin shall form another district; the counties of Buckingham, Campbell and Cumberland shall form another district; the counties of Patrick, Henry and Pittsylvania, shall form another district; the counties of Halifax and Mecklenburg shall form another district; the counties of Charlotte, Lunenburg, Nottoway and Prince Edward shall form another district; the counties of Amelia, Powhatan and Chesterfield, and the town of Petersburg, shall form another district; the counties of Brunswick, Dinwiddie and Greenesville shall form another district; the counties of Isle of Wight, Prince George, Southampton, Surry and Sussex, shall form another district; and the counties of Norfolk, Nansemond and Princess Anne, and the borough of Norfolk, shall form another district.

4. It shall be the duty of the legislature to re-apportion, once in ten years, to wit: in the year 1841, and every ten years thereafter, the representation of the counties, cities, towns and boroughs of this commonwealth, in both of the legislative bodies: *Provided however*, That the number of delegates from the aforesaid great districts, and the number of senators from the aforesaid two great divisions respectively, shall neither be increased nor diminished by such re-apportionment. And when a new county shall hereafter be created, or any city, town or borough, not now entitled to separate representation in the house of delegates, shall have so increased in population as to be entitled, in the opinion of the general assembly, to such representation, it shall be the duty of the general assembly to make provision by law for securing to the people of such new county, or such city, town or borough, an adequate representation. And if the object cannot otherwise be effected, it shall be competent to the general assembly to re-apportion the whole representation of the great district containing such new county, or such city, town or borough, within its limits; which re-apportionment shall continue in force till the next regular decennial re-apportionment.

5. The general assembly, after the year 1841, and at intervals thereafter of not less than ten years, shall have authority, two thirds of each house concurring, to make re-apportionments of delegates and senators, throughout the commonwealth, so that the number of delegates shall not at any time exceed 150, nor of senators 36.

6. The whole number of members to which the state may at any time be entitled in the house of representatives of the United States, shall be apportioned as nearly as may be amongst the several counties, cities, boroughs and towns of the state, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years and excluding Indians not taxed, three-fifths of all other persons.

7. Any person may be elected a senator who shall have attained to the age of thirty years, and shall be actually a resident and freeholder within the district, qualified by virtue of his freehold to vote for mem-

bers of the general assembly according to this constitution. And any person may be elected a member of the house of delegates, who shall have attained the age of twenty-five years, and shall be actually a resident and freeholder within the county, city, town, borough or election district, qualified by virtue of his freehold to vote for members of the general assembly according to this constitution: *Provided*, That all persons holding lucrative offices, and ministers of the gospel and priests of every denomination, shall be incapable of being elected members of either house of assembly.

8. The members of the assembly shall receive for their services a compensation to be ascertained by law and paid out of the public treasury; but no law increasing the compensation of the members shall take effect until the end of the next annual session after such law shall have been enacted. And no senator or delegate shall, during the term for which he shall have been elected, be appointed to any civil office of profit under the commonwealth, which shall have been created, or the emoluments of which shall have been increased, during such term, except such offices as may be filled by elections by the people.

9. The general assembly shall meet once or oftener every year. Neither house, during the session of the legislature, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting. A majority of each house shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and shall be authorized to compel the attendance of absent members, in such manner and under such penalties as each house may provide. And each house shall choose its own speaker, appoint its own officers, settle its own rules of proceeding, and direct writs of election for supplying intermediate vacancies. But if vacancies shall occur, by death or resignation, during the recess of the general assembly, such writs may be issued by the governor, under such regulations as may be prescribed by law. Each house shall judge of the election, qualification and returns of its members; may punish its members for disorderly behaviour, and, with the concurrence of two-thirds, expel a member, but not a second time for the same offence.

10. All laws shall originate in the house of delegates, to be approved or rejected by the senate, or to be amended with the consent of the house of delegates.

11. The privilege of the writ of *habeas corpus* shall not in any case be suspended. The legislature shall not pass any bill of attainder; or any *ex post facto* law; or any law impairing the obligation of contracts; or any law whereby private property shall be taken for public uses, without just compensation; or any law abridging the freedom of speech or of the press. No man shall be compelled to frequent or support any religious worship, place or ministry whatsoever; nor shall any man be enforced, restrained, molested or burthened in his body or goods, or otherwise suffer, on account of his religious opinions or belief; but all men shall be free to profess, and by argument to maintain, their opinions in matters of religion, and the same shall in no wise affect, diminish or enlarge their civil capacities. And the legislature shall not prescribe any religious test whatever; nor confer any peculiar privileges or advan-

tages on any one sect or denomination; nor pass any law requiring or authorizing any religious society, or the people of any district within this commonwealth, to levy on themselves or others any tax for the erection or repair of any house for public worship, or for the support of any church or ministry; but it shall be left free to every person to select his religious instructor, and to make for his support such private contract as he shall please.

12. The legislature may provide by law that no person shall be capable of holding or being elected to any post of profit, trust or emolument, civil or military, legislative, executive or judicial, under the government of this commonwealth, who shall hereafter fight a duel, or send or accept a challenge to fight a duel, the probable issue of which may be the death of the challenger or challenged, or who shall be a second to either party, or shall in any manner aid or assist in such duel, or shall be knowingly the bearer of such challenge or acceptance; but no person shall be so disqualified by reason of his having heretofore fought such duel, or sent or accepted such challenge, or been second in such duel, or bearer of such challenge or acceptance.

13. The governor, the judges of the court of appeals and superior courts, and all others offending against the state, either by mal-administration, corruption, neglect of duty, or any other high crime or misdemeanor, shall be impeachable by the house of delegates; such impeachment to be prosecuted before the senate, which shall have the sole power to try all impeachments. When sitting for that purpose, the senate shall be on oath or affirmation: and no person shall be convicted without the concurrence of two thirds of the members present. Judgment, in cases of impeachment, shall not extend further than to removal from office and disqualification to hold and enjoy any office of honour, trust or profit, under the commonwealth; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment, according to law.

14. Every white male citizen of the commonwealth, resident therein, aged twenty-one years and upwards, being qualified to exercise the right of suffrage according to the former constitution and laws; and every such citizen, being possessed, or whose tenant for years, at will or at sufferance, is possessed, of an estate of freehold in land of the value of twenty-five dollars, and so assessed to be if any assessment thereof be required by law; and every such citizen, being possessed, as tenant in common, joint tenant or parcener, of an interest in or share of land, and having an estate of freehold therein, such interest or share being of the value of twenty-five dollars, and so assessed to be if any assessment thereof be required by law; and every such citizen, being entitled to a reversion or vested remainder in fee, expectant on an estate for life or lives, in land of the value of fifty dollars, and so assessed to be if any assessment thereof be required by law; (each and every such citizen, unless his title shall have come to him by descent, devise, marriage or marriage-settlement, having been so possessed or entitled for six months;) and every such citizen, who shall own and be himself in actual occupation of a leasehold estate, with the evidence of title recorded two months before he shall offer to vote, of a term originally not less than five years, of the annual value

or rent of twenty dollars; and every such citizen, who for twelve months next preceding has been a housekeeper and head of a family within the county, city, town, borough or election district where he may offer to vote, and shall have been assessed with a part of the revenue of the commonwealth within the preceding year, and actually paid the same—and no other persons—shall be qualified to vote for members of the general assembly, in the county, city, town or borough, respectively, wherein such land shall lie, or such housekeeper and head of a family shall live. And in case of two or more tenants in common, joint tenants or parceners, in possession, reversion or remainder, having interest in land, the value whereof shall be insufficient to entitle them all to vote, they shall together have as many votes as the value of the land shall entitle them to: and the legislature shall by law provide the mode in which their vote or votes shall in such case be given: *Provided nevertheless*, That the right of suffrage shall not be exercised by any person of unsound mind, or who shall be a pauper, or a non-commissioned officer, soldier, seaman or marine, in the service of the United States, or by any person convicted of any infamous offence.

15. In all elections in this commonwealth, to any office or place of trust, honour or profit, the votes shall be given openly, or *viva voce*, and not by ballot.

ARTICLE IV.

1. The chief executive power of this commonwealth shall be vested in a governor, to be elected by the joint vote of the two houses of the general assembly. He shall hold his office during the term of three years, to commence on the first day of January next succeeding his election, or on such other day as may, from time to time, be prescribed by law; and he shall be ineligible to that office for three years next after his term of service shall have expired.

2. No person shall be eligible to the office of governor, unless he shall have attained the age of thirty years, shall be a native citizen of the United States, or shall have been a citizen thereof at the adoption of the federal constitution, and shall have been a citizen of this commonwealth for five years next preceding his election.

3. The governor shall receive for his services a compensation to be fixed by law, which shall be neither increased nor diminished during his continuance in office.

4. He shall take care that the laws be faithfully executed; shall communicate to the legislature, at every session, the condition of the commonwealth, and recommend to their consideration such measures as he may deem expedient. He shall be commander-in-chief of the land and naval forces of the state. He shall have power to embody the militia, when, in his opinion, the public safety shall require it; to convene the legislature, on application of a majority of the members of the house of delegates, or when, in his opinion, the interest of the commonwealth may require it; to grant reprieves and pardons, except where the prosecution shall have been carried on by the house of delegates, or the law shall otherwise particularly direct; to conduct, either in person, or in such manner as shall be prescribed by law, all intercourse with other and foreign

states; and during the recess of the legislature, to fill, *pro tempore*, all vacancies in those offices, which it may be the duty of the legislature to fill permanently: *Provided*, That his appointments to such vacancies shall be by commissions to expire at the end of the next succeeding session of the general assembly.

5. There shall be a council of state, to consist of three members, any one or more of whom may act. They shall be elected by joint vote of both houses of the general assembly, and remain in office three years. But of those first elected, one, to be designated by lot, shall remain in office for one year only, and one other to be designated in like manner, shall remain in office for two years only. Vacancies occurring by expiration of the term of service, or otherwise, shall be supplied by elections made in like manner. The governor shall, before he exercises any discretionary power conferred on him by the constitution and laws, require the advice of the council of state, which advice shall be registered in books kept for that purpose, signed by the members present and consenting thereto, and laid before the general assembly when called for by them. The council shall appoint their own clerk, who shall take an oath to keep secret such matters as he shall be ordered by the board to conceal. The senior councillor shall be lieutenant-governor, and in case of the death, resignation, inability or absence of the governor from the seat of government, shall act as governor.

6. The manner of appointing militia officers shall be provided for by law; but no officer below the rank of a brigadier-general, shall be appointed by the general assembly.

7. Commissions and grants shall run in the name of the commonwealth of Virginia, and bear teste by the governor, with the seal of the commonwealth annexed.

ARTICLE V.

1. The judicial power shall be vested in a supreme court of appeals, in such superior courts as the legislature may from time to time ordain and establish, and the judges thereof, in the county courts, and in justices of the peace. The legislature may also vest such jurisdiction as shall be deemed necessary in corporation courts, and in the magistrates who may belong to the corporate body. The jurisdiction of these tribunals, and of the judges thereof, shall be regulated by law. The judges of the supreme court of appeals and of the superior courts, shall hold their offices during good behaviour, or until removed in the manner prescribed in this constitution; and shall, at the same time, hold no other office, appointment, or public trust; and the acceptance thereof by either of them shall vacate his judicial office.

2. No law abolishing any court shall be construed to deprive a judge thereof of his office, unless two-thirds of the members of each house present concur in the passing thereof; but the legislature may assign other judicial duties to the judges of courts abolished by any law enacted by less than two-thirds of the members of each house present.

3. The present judges of the supreme court of appeals, of the general court, and of the superior courts of chancery, shall remain in office until

the termination of the session of the first legislature elected under this constitution, and no longer.

4. The judges of the supreme court of appeals and of the superior courts shall be elected by the joint vote of both houses of the general assembly.

5. The judges of the supreme court of appeals and of the superior courts shall receive fixed and adequate salaries, which shall not be diminished during their continuance in office.

6. Judges may be removed from office by a concurrent vote of both houses of the general assembly; but two-thirds of the members present must concur in such vote, and the cause of removal shall be entered on the journals of each. The judge against whom the legislature may be about to proceed, shall receive notice thereof, accompanied with a copy of the causes alleged for his removal, at least twenty days before the day on which either house of the general assembly shall act thereupon.

7. On the creation of any new county, justices of the peace shall be appointed, in the first instance, in such manner as may be prescribed by law. When vacancies shall occur in any county, or it shall, for any cause, be deemed necessary to increase the number, appointments shall be made by the governor, on the recommendation of the respective county courts.

8. The attorney-general shall be appointed by joint vote of the two houses of the general assembly, and commissioned by the governor, and shall hold his office, during the pleasure of the general assembly. The clerks of the several courts, when vacancies shall occur, shall be appointed by their respective courts, and the tenure of office, as well of those now in office as of those who may be hereafter appointed, shall be prescribed by law. The sheriffs and coroners shall be nominated by the respective county courts, and when approved by the governor, shall be commissioned by him. The justices shall appoint constables. And all fees of the aforesaid officers shall be regulated by law.

9. Writs shall run in the name of the commonwealth of Virginia, and bear teste by the clerks of the several courts. Indictments shall conclude, Against the peace and dignity of the commonwealth.

ARTICLE VI.

A treasurer shall be appointed annually by joint vote of both houses.

ARTICLE VII.

The executive department of the government shall remain as at present organized, and the governor and privy councillors shall continue in office, until a governor elected, under this constitution, shall come into office; and all other persons in office when this constitution shall be adopted, except as is herein otherwise expressly directed, shall continue in office, till successors shall be appointed, or the law shall otherwise provide; and all the courts of justice now existing shall continue with their present

jurisdiction, until and except so far as the judicial system may or shall be hereafter otherwise organized by the legislature.

Done in Convention in the city of Richmond, on the fifteenth day of January, in the year of our Lord one thousand eight hundred and thirty, and in the fifty-fourth year of the independence of the United States of America.

Philip. P. Barbour

President of the Convention

D. Bragg

Secretary of the Convention;

RATIFICATION

OF THE

CONSTITUTION OF VIRGINIA.

On the day that the president of the convention of Virginia signed, and the secretary attested the enrolled amended constitution, to wit: on the 15th of January 1830, the convention ordered as follows:

Ordered, That the roll containing the draft of the amended constitution adopted by this convention, and by it submitted to the people of this commonwealth, for their ratification or rejection, be enclosed by the secretary in a case proper for its preservation, and deposited among the archives of the council of state.

Ordered, That the secretary do cause the journal of the proceedings of this convention to be fairly entered in a well bound book, and after the same shall have been signed by the president, and attested by the secretary, that he deposit the same, together with all the original documents in the possession of the convention, and connected with its proceedings, among the archives of the council of state; and further, that he cause ten printed copies of the said journal to be well bound, and deposited in the public library.

Ordered, That the president of the convention do certify a true copy of the amended constitution to the general assembly now in session; and that the general assembly be and they are hereby requested to make any additional provisions by law, which may be necessary and proper for submitting the same to the voters thereby qualified to vote for members of the general assembly at the next April elections, and for organizing the government under the amended constitution, in case it shall be approved and ratified by such voters.

On the 12th of February 1830, an act of assembly was passed* under which the amended constitution was submitted to the voters, qualified thereby to vote for members of the general assembly, for their ratification or rejection. Upon examination of the polls, it appearing to the executive that a majority of the votes given was for ratifying the amended constitution, that fact was made known to the people by a proclamation bearing date the first day of July 1830; in the proclamation the number of votes was stated to be 26,055 for the ratification, and 15,563 against it.

* 1829, '30, p. 12, ch. 9.

THE CODE OF VIRGINIA,

PASSED BY THE

GENERAL ASSEMBLY

OF THE

COMMONWEALTH OF VIRGINIA,

IN THE MONTH OF AUGUST, IN THE YEAR ONE THOUSAND
EIGHT HUNDRED AND FORTY-NINE.

WHEREAS it is expedient that the general statutes of this commonwealth should be arranged in appropriate titles, chapters and sections; that omissions and defects therein should be supplied and remedied; and that the whole should be rendered concise, plain and intelligible: Therefore,

Be it enacted by the general assembly, in manner following, that is to say:

Title 1.

OF THE JURISDICTION OF THE COMMONWEALTH.

CHAP. 1. Of the territorial limits of Virginia, nature of the compacts with adjoining states, and the surveys, charts and map, made by authority of the state, of its territory.

CHAP. 2. Jurisdiction over places in this state purchased by the United States for the erection of forts and other buildings; and survey of the coast.

CHAPTER I.

OF THE TERRITORIAL LIMITS OF VIRGINIA, NATURE OF THE COMPACTS WITH ADJOINING STATES, AND THE SURVEYS, CHARTS AND MAP, MADE BY AUTHORITY OF THE STATE, OF ITS TERRITORY.

SEC.

1. Extent of the territory of Virginia under the royal government.
2. Cession of territory northwest of the river Ohio.
3. Boundary line between Virginia and Pennsylvania.
4. Boundary line between Virginia and North Carolina.

SEC.

5. Boundary line between Virginia and Tennessee.
6. Boundary and compact between Virginia and Kentucky.
7. Compact and boundary between Virginia and Maryland.
8. County of Alexandria.
9. Map of the State, charts of the counties and geological survey.

Extent of the territory of Virginia under the royal government.

1 Hen. Stat. p. 59,
§ 4.

§ 1. The charter of the tenth of April sixteen hundred and six, granted by *James* the First in the fourth year of his reign, having authorized the first plantation at any place upon the coast of *Virginia* between the thirty-fourth and forty-first degrees of north latitude; and granted the territory from the seat of the plantation (which under this charter was begun at *Jamestown*,) for fifty miles along the coast towards the west and southwest, as the coast lay, and for fifty miles along the coast, towards the east and northeast, or towards the north, as the coast lay, together with all the islands within one hundred miles directly over against the sea-coast, and all the territory from the same fifty miles every way on the sea-coast, directly into the main land for the space of one hundred miles: The second charter of *James*, dated the twenty-third of May sixteen hundred and nine, in the seventh year of his reign, having granted all the territory from the point of land called *Cape* or *Point Comfort*, all along the sea-coast to the northward two hundred miles, and from the said point of *Cape Comfort* all along the sea-coast to the southward two hundred miles, and all that space and circuit of land lying from the sea-coast of the precinct aforesaid, up into the land, throughout from sea to sea, west and northwest, and also all the islands lying within one hundred miles along the coast of both seas of the precinct aforesaid: The third charter of *James*, dated the twelfth of March sixteen hundred and eleven-twelve, in the ninth year of his reign, having granted all the islands in any part of the seas within three hundred leagues of any territory granted in the former patents: Under the treaty of peace between *Great Britain* and *France* in the year seventeen hundred and sixty-three, a line drawn along the middle of the river *Mississippi* having become *Virginia's* western boundary: And the people of *Virginia*, when they adopted their constitution or form of government, on the twenty-ninth

1 Hen. Stat. p. 88,
§ 6.

1 Hen. Stat. p.
100, § 4.

of June seventeen hundred and seventy-six, having by the twenty-first section thereof, ceded, released and confirmed to the people of *Maryland, Pennsylvania, North and South Carolina*, such parts of the territory of *Virginia* as were contained within the charters erecting those colonies, with all the rights in those parts which might theretofore have been claimed by *Virginia* except the free navigation of the rivers *Potomac* and *Pocomoke*, with the property of the *Virginia* shore or strands bordering on either of the said rivers, and all improvements thereon; and having at the same time laid down in the said section that the western and northern extent of *Virginia* should in all other respects stand as fixed by the said charter of *James* the First, granted in sixteen hundred and nine, and by the said treaty of peace between *Great Britain* and *France* in seventeen hundred and sixty-three, unless by act of the legislature one or more territories should thereafter be laid off, and governments established westward of the *Alleghany* mountains: The general assembly of *Virginia* doth hereby declare that the territory of this commonwealth and the boundaries thereof remain as they were after the said constitution was adopted on the twenty-ninth of June seventeen hundred and seventy-six, except only as follows, that is to say:

Cession of territory northwest of the river Ohio.

§ 2. The general assembly of *Virginia* having, on the second of January seventeen hundred and eighty-one, resolved that this commonwealth would on certain conditions yield for the benefit of the *United States* all her right to the territory north-west of the river *Ohio*; having after the act of congress of the thirteenth of September seventeen hundred and eighty-three, passed a formal act on the twentieth of December seventeen hundred and eighty-three, authorizing the transfer to the *United States* of all right, as well of soil as of jurisdiction, which this commonwealth had to the said territory, subject to the terms and conditions contained in the said act of congress; the deed of cession having been made accordingly, and an act of assembly having afterwards been passed on the thirtieth of December seventeen hundred and eighty-eight, whereby, after referring to an ordinance for the government of the said territory, passed by congress on the thirteenth of July seventeen hundred and eighty-seven, and reciting a particular article declared in the said ordinance to be part of the compact between the original states and the people and states in the said territory, the said article of compact was ratified and confirmed;—it is hereby declared that the said cession is to be deemed and taken according to the true intent and meaning of the acts and deed aforesaid, and subject to all the terms and conditions therein expressed. And so far as the territory northwest of the river *Ohio* forms one of the boundaries of this commonwealth, the said river

10 Hen. Stat. 564.

11 Hen. Stat. 567.

Id. 328.

1 R. C. p. 39, ch. 5.

11 Hen. Stat. 571.

12 Hen. Stat. 780.

1 R. C. p. 41, ch.

6, and p. 43, ch. 7.

1819-20, p. 66, ch.

74.

with the islands thereof, shall be considered as comprehended, and is hereby declared to be comprehended within the bodies of the several counties of this commonwealth lying upon the said river; subject, however, to the provisions contained in the articles of compact between *Virginia* and *Kentucky* hereinafter mentioned.

Boundary line between Virginia and Pennsylvania.

10 Hen. Stat. 534.
1 R. C. p. 51, ch.
16.

10 Hen. Stat. 535.

11 Hen. Stat.
554, 5.

1 R. C. p. 52, ch.
17.

§ 3. The commissioners appointed to adjust the boundary line between the states of *Virginia* and *Pennsylvania*, having, on the thirty-first of August seventeen hundred and seventy-nine, entered into an agreement that *Mason's* and *Dixon's* line should be extended due west five degrees of longitude, to be computed from the river *Delaware*, for the southern boundary of *Pennsylvania*, and that a meridian drawn from the western extremity thereof to the northern limits of the said state, should be the western boundary of that state: the general assembly of *Virginia* having by its resolutions of the fourth of July seventeen hundred and eighty, ratified and confirmed that agreement on certain conditions, and empowered the governor of this commonwealth, upon the acceptance and full ratification of the said conditions and agreement on the part of *Pennsylvania*, to appoint two commissioners on behalf of this commonwealth, in conjunction with commissioners of *Pennsylvania*, to extend the first mentioned line, and from the western termination thereof to run and mark a meridian line to the *Ohio* river, which was as far as the same could then be marked without danger of umbrage to the Indians: the governor of this commonwealth having, after such acceptance and ratification on the part of *Pennsylvania*, appointed such commissioners on behalf of this state; and the commissioners of the two states having made a report, bearing date the eighteenth day of November seventeen hundred and eighty-four, which sets forth that they had continued *Mason's* and *Dixon's* line to the termination of the said five degrees of longitude, by which work the southern boundary of *Pennsylvania* was completed; and having made a farther report of the twenty-third day of August seventeen hundred and eighty-five, setting forth that they had carried on a meridian line from the south-west corner of *Pennsylvania*, northward to the river *Ohio*, which last-mentioned report was recorded in the journal of the governor and council of this state, on the eighth of October seventeen hundred and eighty-five:—It is hereby declared, that the agreement mentioned and the conditions expressed in the said resolutions of the fourth of July seventeen hundred and eighty, remain in force, and the line commonly called *Mason's* and *Dixon's* line, so extended due west five degrees of longitude, computed from the river *Delaware*, and the meridian line from the western termination of such extended line to the

north side of the *Ohio* river, constitute the boundary line between *Virginia* and *Pennsylvania*.

Boundary line between Virginia and North Carolina.

§ 4. The boundary line between *Virginia* and *North Caro-* 9 Hen. Stat. 561.
lina having been run part of the way by *Joshua Fry* and *Peter Jefferson*, commissioners from *Virginia*, together with others from *North Carolina*; and after the inhabitants of this commonwealth and those of *North Carolina* had settled themselves farther westward than the line was so run, the general assembly of *Virginia* having, at October session seventeen hundred and seventy-eight, passed an act under which *Thomas Walker* and *Daniel Smith* were appointed commissioners on the part of this state to meet others on the part of *North Carolina*, and extend and mark the line between *Virginia* and *North Carolina*, which commissioners on the part of this state made a report of the line run under the said act; and the line so run, commonly called and known by the name of *Walker's* line, having been established as the boundary between *North Carolina* and this commonwealth, first by the legislature of that state, and then, on the seventh of December, seventeen hundred and ninety-one, by an act of the general assembly of this state: It is hereby declared that the line so run by *Fry* and *Jefferson*, 13 Hen. Stat. 258.
 and afterwards extended by *Walker* and *Smith* as before men- 1 R. C. p. 62 ch. 21.
 tioned, constitutes the boundary line between *Virginia* and *North Carolina*; but the claims for lands lying between *Walker's* line and the line commonly called *Henderson's* line, are to be decided in favour of the oldest title, whether derived from this commonwealth or from the state of *North Carolina*.

Boundary line between Virginia and Tennessee.

§ 5. The state of *North Carolina* having before the said act of the seventh of December seventeen hundred and ninety-one was passed, to wit, on the twenty-fifth of February seventeen hundred and ninety, ceded to the *United States* the whole of the territory since admitted as one of the *United States* by the name of *Tennessee*, in consequence whereof, it was afterwards contended that the acts of *Virginia* and *North Carolina* establishing the boundary line before mentioned could bind no farther than the territorial limits of *North Carolina* extended when those acts passed; and upon its being represented to the general assembly of this state, that the people living between what were called *Walker's* and *Henderson's* lines, so far as the same run between *Tennessee* and *Virginia*, did not consider themselves under the jurisdiction of either state, the ge- 1799, 1800, p. 33.
 neral assembly having, on the tenth of January eighteen hundred, adopted a resolution under which commissioners were appointed to meet commissioners of the state of *Tennessee*, to adjust all differences concerning the said boundary line, and

1802-3 p. 29, ch.
33.
1 R. C. p. 63, ch.
22.

establish one or the other of the said lines, or run any other line which might be agreed on: The commissioners of the two states of *Virginia* and *Tennessee* not having united in establishing as the boundary line between the two, either of the lines called *Walker's* and *Henderson's*, but having unanimously agreed, in order to end all controversy respecting the subject, to run a due line west, equally distant from both, beginning on the summit of the *White Top* mountains, which is the northeastern corner of the state of *Tennessee*, and going to the top of the *Cumberland* mountain, which is the southwestern corner of the state of *Virginia*: And the general assembly of *Virginia* having afterwards, on the twenty-second of January eighteen hundred and three, passed an act establishing the line fixed on by the said commissioners: It is hereby declared that the said line so fixed on at an equal distance between the lines called *Walker's* and *Henderson's*, is the boundary line between *Virginia* and *Tennessee*; but all titles or claims to lands derived from the government of *North Carolina* or *Tennessee*, which, by the establishment of the said boundary line between *Virginia* and *Tennessee*, have fallen into *Virginia*, shall remain as secure to the owners thereof as if they had been derived from the government of *Virginia*; and the acts of all public officers done or performed before the establishment of the said boundary line in that portion of territory between the lines called *Walker's* and *Henderson's* lines, which by the establishment of the said line became a part of *Virginia*, are recognized and confirmed, so far as such acts would have been legal if done or performed in the state of *North Carolina* or *Tennessee*.

Boundary and compact between Virginia and Kentucky.

13 Hen. Stat. p.
17.
1 R. C. p. 57, ch.
19.

§ 6. The general assembly of *Virginia* having, on the eighteenth of December seventeen hundred and eighty-nine, passed an act authorizing a convention to be held in the district of *Kentucky*, to consider and determine whether it was expedient for the people of the said district that the same should be erected into an independent state on the terms and conditions set forth in eight articles, the first of which was, that the boundary between the proposed state and *Virginia* should remain the same as then separated the said district from the residue of the commonwealth of *Virginia*: The convention so held having approved of the erection of the said district into an independent state on those terms and conditions, and having according to the said act fixed a day posterior to the first day of November seventeen hundred and ninety-one, on which the authority of this commonwealth and of its laws, under the exceptions aforesaid, should cease and determine over the proposed state, and the said articles become a solemn compact mutually binding on the parties, and unalterable by either without the consent of the other: The state so formed within the jurisdiction of *Virginia* with the consent of

the legislature thereof, having upon the first day of June seventeen hundred and ninety-two, by virtue of an act of congress, approved the fourth of February seventeen hundred and ninety-one, been admitted by the name of *Kentucky* into this Union as a member of the *United States*: Commissioners having afterwards been appointed to adjust the boundary line between *Virginia* and *Kentucky*, who agreed that the boundary line between the said states should be and remain as follows, to wit: "To begin at the point where the *Carolina*, now *Tennessee* line, crosses the top of the *Cumberland* mountain, near *Cumberland Gap*; thence northeastwardly along the top or highest part of the said *Cumberland* mountain, keeping between the head waters of *Cumberland* and *Kentucky* rivers on the west side thereof, and the head waters of *Powell's* and *Guest's* rivers, and the Pound fork of *Sandy*, on the east side thereof, continuing along the said top or highest part of said mountain, crossing the road leading over the same at the *Little Paint Gap*, where by some it is called the *Hollow* mountain, to where it terminates at the west fork of *Sandy*, commonly called *Russell's* fork, thence with a line to be run north forty-five degrees east, till it intersects the other great principal branch of *Sandy*, commonly called the northeastwardly branch, thence down the said northeastwardly branch to its junction with the main west branch, and down main *Sandy* to its confluence with the *Ohio*:" And by an act ^{1799, 1800, p. 25, ch. 46.} of the general assembly of *Virginia*, passed the thirteenth of ^{1 R. C. p. 60, ch. 20.} January eighteen hundred, the boundary line between this state and *Kentucky* having been established as laid down by the said commissioners, whose report is set forth in the said act:—It is hereby declared that the said line so laid down remains the true boundary line between *Virginia* and *Kentucky*; but all claims to lands founded on entries in any surveyor's office of the state of *Kentucky*, made after the separation thereof from this state, and before the thirteenth day of January eighteen hundred, which, by means of the establishment of the boundary line above mentioned, have fallen into this state, shall be as valid as if such entries had been made in the proper surveyors' offices of this state. It is also hereby declared that the articles set forth in the said act of the eighteenth December seventeen hundred and eighty-nine remain a solemn compact mutually binding on the states of *Virginia* and *Kentucky*, and unalterable by either without the consent of the other, by which articles it was stipulated thirdly, that all private rights and interests of lands within *Kentucky* derived from the laws of *Virginia* prior to the separation shall remain valid and secure under the laws of *Kentucky*, and be determined by the laws existing in *Virginia* when the said act passed; fourthly, that the lands within *Kentucky* of non-resident proprietors should not in any case be taxed higher than the lands of residents at any time prior to the admission of *Kentucky* to a vote by its delegates in

congress, where such non-residents reside out of the *United States*; nor at any time either before or after such admission, where such non-residents reside within this commonwealth, within which this stipulation should be reciprocal; or where such non-residents reside within any other of the *United States*, which should declare the same to be reciprocal within its limits; fifthly, that no grant of land or land-warrant issued by *Kentucky* should interfere with any warrant issued from the land-office of *Virginia*, which should on or before the first day of September seventeen hundred and ninety-one be located on land within *Kentucky*, liable thereto at the date of that act; seventhly, that the use and navigation of the river *Ohio*, so far as the territory of *Kentucky* or of *Virginia* lies thereon, shall be free and common to the citizens of the *United States*, and the respective jurisdictions of *Virginia* and *Kentucky* on the river as aforesaid shall be concurrent only with the states which may possess the opposite shores of the said river; eighthly, that in case any complaint or dispute should at any time arise between *Virginia* and *Kentucky* concerning the meaning or execution of the foregoing articles, the same should be determined by six commissioners, of whom two should be chosen by each of the parties, and the remainder by the commissioners so first appointed.

Compact and boundary between Virginia and Maryland.

§ 7. Commissioners appointed by the general assembly of the state of *Maryland* and also of the state of *Virginia*, having met at *Mount Vernon* in *Virginia*, on the twenty-eighth day of March in the year seventeen hundred and eighty-five, and mutually agreed to a compact; the said compact having been confirmed, first by the general assembly of *Maryland*, and afterwards on the third day of January seventeen hundred and eighty-six, by an act of the general assembly of *Virginia*: it is hereby declared, that the said compact remains obligatory, except so far as it may have been superseded by the provisions of the constitution since formed for the *United States*; and it shall be faithfully observed and kept by this government and all its citizens, so far as may not be incompatible with the said constitution. Amongst the articles of the said compact are the following:

12 Hen. Stat. p.
50.
1 R. C. p. 53, ch.
18.

“*Seventh.* The citizens of each state respectively shall have full property in the shores of *Potowmack* river adjoining their lands, with all emoluments and advantages thereunto belonging, and the privilege of making and carrying out wharves and other improvements, so as not to obstruct or injure the navigation of the river; but the right of fishing in the river shall be common to, and equally enjoyed by the citizens of both states: *Provided*, That such common right be not exercised by the citizens of the one state to the hindrance or disturbance of the fisheries on the shores of the other state; and

that the citizens of neither state shall have a right to fish with nets or seines on the shores of the other.

“*Eighth.* All laws and regulations which may be necessary for the preservation of fish, or for the performance of quarantine in the river *Potowmack*, or for preserving and keeping open the channel and navigation thereof, or of the river *Pocomoke*, within the limits of *Virginia*, by preventing the throwing out ballast, or giving any other obstruction thereto, shall be made with the mutual consent and approbation of both states.

“*Tenth.* All piracies, crimes or offences committed in that part of *Chesapeake* bay which lies within the limits of *Virginia*, or that part of the said bay where the line of division from the south point of *Potowmack* river (now called *Smith's* point,) to *Watkins's* point, near the mouth of *Pocomoke* river, may be doubtful, and on that part of *Pocomoke* river within the limits of *Virginia*, or where the line of division between the two states upon the said river is doubtful, by any persons not citizens of the commonwealth of *Virginia*, against the citizens of *Maryland*, shall be tried in the court of the state of *Maryland*, which hath legal cognizance of such offence. And all piracies, crimes or offences committed on the before-mentioned parts of *Chesapeake* bay and *Pocomoke* river, by any persons, not citizens of *Maryland*, against any citizen of *Virginia*, shall be tried in the court of the commonwealth of *Virginia* which hath legal cognizance of such offence. All piracies, crimes and offences committed on the said parts of *Chesapeake* bay and *Pocomoke* river, by persons not citizens of either state against persons not citizens of either state, shall be tried in the court of the commonwealth of *Virginia* having legal cognizance of such offences. And all piracies, crimes and offences committed on the said parts of *Chesapeake* bay and *Pocomoke* river by any citizen of the commonwealth of *Virginia* or of the state of *Maryland*, either against the other, shall be tried in the court of that state of which the offender is a citizen. The jurisdiction of each state over the river *Potowmack* shall be exercised in the same manner as is prescribed for the before-mentioned parts of *Chesapeake* bay and *Pocomoke* river in every respect, except in the case of piracies, crimes and offences committed by persons not citizens of either state upon persons not citizens of either state, in which case the offenders shall be tried by the court of the state to which they shall first be brought. And if the inhabitants of either state shall commit any violence, injury or trespass to or upon the property or lands of the other adjacent to the said bay or rivers, or to any person upon such lands, upon proof of due notice to the offender to appear and answer, any court of record, or civil magistrate of the state where the offence shall have been committed, having jurisdiction thereof, may enter the appearance of such person, and proceed to trial and judgment, in the same manner as if legal process

had been served on such offender; and such judgment shall be valid and effectual against the person and property of such offender, both in the state where the offence shall have been committed and also in the state where the said offender may reside; and execution may be issued by the court or magistrate giving such judgment, in the same manner as upon judgments given in other cases; or upon a transcript of such judgment, properly authenticated, being produced to any court or magistrate of the state where such offender may reside, having jurisdiction within the state or county where the offender may reside, in cases of a similar nature, such court or magistrate shall order execution to issue upon such authenticated judgment in the same manner and to the same extent as if the judgment had been given by the court or magistrate to which such transcript shall be exhibited.

“*Eleventh.* Any vessel entering into any port on the river *Potowmack* may be libelled or attached for debt by process from the state in which such vessel entered. And if the commercial regulations of either state shall be violated by any person carrying on commerce in *Potowmack* or *Pocomoke* rivers, the vessel owned or commanded by the person so offending, and the property on board, may be seized by process from the state whose laws are offended, in order for trial. And if any person shall fly from justice in a civil or criminal case, or shall attempt to defraud creditors by removing his property, such person, or any property so removed, may be taken on any part of *Chesapeake* bay, or the rivers aforesaid, by process of the state from which such person shall fly or property be removed; and process from the state of *Virginia* may be served on any part of the said rivers, upon any person or property of any person not a citizen of *Maryland*, indebted to any citizen of *Virginia*, or charged with injury having been by him committed; and process from the state of *Maryland* may be served on any part of the said rivers, upon any person, or property of any person, not a citizen of *Virginia*, indebted to a citizen of *Maryland*, or charged with injury by him committed. And in all cases of trial in pursuance of the jurisdiction settled by this compact, citizens of either state shall attend as witnesses in the other, upon a summons from any court or magistrate, having jurisdiction, being served by a proper officer of the county where such citizen shall reside.”

1821-2, p. 15, ch.

14.

1831-2, p. 308, No.

4.

1832-3, p. 24, ch.

32.

1834-5 p. 251, No.

2.

The documents in relation to the boundary between the states of *Maryland* and *Virginia*, which were obtained under the resolution adopted by the general assembly of *Virginia* on the twentieth of March eighteen hundred and thirty-two, and the report relative to the said boundary referred to in the subsequent resolution of the twenty-first of February eighteen hundred and thirty-five, shall be preserved in the executive department as contemplated by the said resolutions. For the better perpetuation of the same, a copy thereof shall be likewise filed in the office of the Board of public works.

County of Alexandria.

§ 8. That portion of the district of *Columbia* which by an act ^{13 Hen. Stat. p. 43.} of the general assembly of *Virginia*, passed the third day of December seventeen hundred and eighty-nine, was ceded to the *United States*, and all the rights and jurisdiction therewith ceded over the same, having, with the assent of the people of the county and town of *Alexandria*, ascertained as prescribed by an act of congress, approved the ninth of July eighteen hundred and forty-six, been ceded and forever relinquished to this state, in full and absolute right and jurisdiction, as well of soil as of persons residing or to reside therein, it is hereby declared that the same is now re-annexed to this commonwealth and constitutes a portion thereof, subject to such reservation and provisions respecting the public property of the *United States* as congress has enacted in their act of re-cession. ^{1 R. C. p. 44, ch. 8. 1845-6, p. 50, ch. 64.}

Map of the state, charts of the counties, and geological survey.

§ 9. Under the provisions of the act passed the twenty-seventh of February eighteen hundred and sixteen, to provide an accurate chart of each county, and a general map of the territory of the commonwealth, and of the act amending the same, which passed the ninth of January eighteen hundred and seventeen, a chart having been made of every county created before the first day of January eighteen hundred and twenty-four, one copy of the chart of every such county shall remain with the clerk of the county court for the use of the county, as directed by the said acts, and another copy shall remain in the office of the Board of public works. ^{1815-16, p. 39, ch. 18. 1816-17, p. 29, ch. 22. 1 R. C. p. 207, ch. 231, and p. 210, ch. 232.}

§ 10. The other materials collected under the said acts for a general map of the territory of the commonwealth, and the plates made under the act passed February the fourteenth eighteen hundred and twenty-five, to provide for engraving the map, shall be under the control of said board. A copy of each sized map published under the act passed March ninth eighteen hundred and twenty-seven, shall likewise remain in the office of the said board. ^{1824-5, p. 19, ch. 17. 1826-7, p. 12, ch. 8.}

§ 11. In every case in which it has not already been done under the act passed February the eleventh eighteen hundred and forty-five, the clerk of the court of each county created since the first day of January eighteen hundred and twenty-four, shall transmit as soon as practicable to the Board of public works a copy of the report in relation to the boundary lines of such county, returned to said court by the commissioners or surveyors upon whom it devolved to run the same, and also a copy of the plats, notes and papers accompanying such report. If no plat shall have been returned, the court shall cause one to be made, and a copy thereof returned to the Board of public works, and another copy recorded in the office of such court. For any copy returned to the said board under this section, it may make a reasonable compensation. ^{1844-5, p. 38, ch. 40, § 2.}

§ 12. The said board shall be authorized to employ a competent person to examine the materials which may be obtained under the preceding section, and any other materials which may be now or hereafter in the office of the board, and with the aid thereof to make such drawings as may be necessary to have the plates for the general map of the territory of the commonwealth corrected and improved in those respects, wherein the same can properly be done; and the said board shall cause the plates for the said map to be corrected and improved accordingly, before any further copies of the said map are published.

1835-6, p. 67, ch.
93.
1836-7, p. 96, ch.
102.

§ 13. The reports which were made under the acts passed February twenty-ninth eighteen hundred and thirty-six, providing for a geological survey of the state, and under the act passed February second eighteen hundred and thirty-seven, to amend the same, and the profiles, maps and documents which accompanied those reports, shall remain in the office of the Board of public works. The ornamental paintings or drawings which were made, and the mineral materials and other specimens which were collected during the operations of the geologist and of others engaged with him, shall be preserved in a suitable room in the capitol, to be fitted up for the purpose under the direction of the said board.

CHAPTER II.

JURISDICTION OVER PLACES IN THIS STATE PURCHASED BY THE UNITED STATES FOR THE ERECTION OF FORTS AND OTHER BUILDINGS; AND SURVEY OF THE COAST.

Places purchased by the United States for forts and other buildings.

§ 1. The *United States* having, by the consent of the general assembly of this state, purchased or obtained jurisdiction over certain places therein, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings; that is to say:

13 Hen. Stat. p. 3,
ch. 5.
1 R. C. p. 47, ch.
12.

Under an act of the thirteenth of November seventeen hundred and eighty-nine, lands in the county of *Princess Anne*, at the headland of *Cape Henry*, for a lighthouse.

1794, p. 16, ch. 24.
1 R. C. p. 45, ch. 9.

Under an act of the twenty-eighth of November seventeen hundred and ninety-four, land for a magazine and arsenal.

1797-8, p. 13, ch.
19.
1 R. C. p. 48, ch.
13.

Under an act of the second of January seventeen hundred and ninety-eight, lands in the county of *Elizabeth City* at *Old Point Comfort*, for a lighthouse.

1797-8, p. 16, ch.
22.
1 R. C. p. 47, ch.
11.

Under an act of the twentieth of January seventeen hundred and ninety-eight, lots for a marine hospital.

Under an act of the twenty-fifth of January eighteen hundred, the lands called *Gosport*, for a navy yard. 1799, 1800, p. 32, ch. 64.

Under an act of the fifteenth of January eighteen hundred and two, lands on *New Point Comfort* in the county of *Matthews*, and on *Smith's Point*, in the county of *Northumberland*, for a lighthouse on each of those points. 1 R. C. p. 46, ch. 10. 1801-2, p. 9, ch. 6. 1 R. C. p. 49, ch. 14.

Under an act of the first of February eighteen hundred and nineteen, land in the borough of *Norfolk*, for a custom-house and public stores. 1818-19, p. 36, ch. 25. 1 R. C. p. 50, ch. 15.

Under an act of the first of March eighteen hundred and twenty-one, the lands and shoal at *Old Point Comfort* and the *Rip Raps*, for fortifications. 1820-21, p. 102, ch. 73.

Under an act of the sixth of February eighteen hundred and twenty-seven, land on the eastern extremity of *Smith's Island*, in the county of *Northampton*, for a lighthouse. 1826-7, p. 16, ch. 16.

Under an act of the twenty-sixth of February eighteen hundred and twenty-eight, land on or adjoining *Smith's Point*, for enlarging the lighthouse on that point, or altering the site thereof. 1827-8, p. 17, ch. 23.

Under an act of the eleventh of February eighteen hundred and twenty-nine, *Little Watt's Island*, in the county of *Accomack*, for a lighthouse thereon. 1828-9, p. 28, ch. 26.

Under an act of the twelfth of January eighteen hundred and thirty-two, lands on *Assateague Island*, in the county of *Accomack*, for a lighthouse. 1831-2, p. 260, ch. 193.

Under an act of the twenty-seventh of February eighteen hundred and thirty-three, lots and streets in the town of *Portsmouth*, and other lands adjoining to *Gosport*, for a navy-yard and dry dock, and lands adjoining *Fort Nelson* in the county of *Norfolk*, for a naval hospital. 1832-3, p. 25, ch. 33.

Under an act of the nineteenth of February eighteen hundred and forty-two, the lands upon which the said fort was erected, and also land on *Hog Island*, in the county of *Northampton*, for a lighthouse. 1841-2, p. 14, ch. 14.

Under an act of the twenty-second of February eighteen hundred and forty-five, the land in *Chesterfield* county, known as the site of the *Bellona* arsenal. 1844-5, p. 14, ch. 11.

Under an act of the twenty-second March eighteen hundred and forty-seven, a parcel of land called *Saint Helena*, as an addition to the navy-yard at *Gosport*. 1846-7, p. 14, ch. 12.

And the transfers of property and jurisdiction authorized by the said acts being subject to certain terms and conditions therein expressed, and with certain restrictions, limitations and provisions, therein set forth :

It is hereby declared, that this state retains concurrent jurisdiction with the *United States* over the said places, so far as it lawfully can, consistently with the acts before mentioned, and its courts, magistrates and officers, may take such cognizance, execute such process, and discharge such other legal functions within the same, as may not be incompatible with the true intent and meaning of the said acts.

Survey of the coast.

1843-4, p. 65, ch.
85.

§ 2. Any person employed under the act of congress providing for a survey of the coasts of the *United States* approved the tenth of February eighteen hundred and seven, or under any act supplemental thereto, may, for the purpose of exploring, surveying, triangulating or levelling, to effect the objects of the first-mentioned act, enter upon any lands within this state, remove the fences, cut down trees, or do any other matter or thing necessary to effect those objects.

§ 3. The damages sustained by removal of the fences, cutting of trees, injury to the crops, or otherwise, if the same be not agreed upon, shall be ascertained either on the application of the person so employed, or of the owner or possessor of the land, as follows, that is to say: notice shall be given by one of them to the other for ten days that at a certain time and place he will apply to a justice to appoint persons to assess the damages. Upon its being shewn to the justice at such time and place that such notice has been given, the justice shall appoint three intelligent, disinterested and impartial freeholders to make such assessment. They shall be duly sworn, and after giving five days' notice of the time of their meeting, both to the applicant and the other party, shall go upon the premises, and then and there, upon their own view and the evidence of such witnesses as may be adduced, to be by them sworn and examined, shall assess the damages.

§ 4. They shall make a report of their proceedings, under their hands, and file the same within five days thereafter in the office of the clerk of the court of the county wherein the land is situated.

§ 5. Within ten days after the same be filed, either party may file with the clerk a written notice stating that he appeals from the assessment to the county court.

§ 6. If no such notice be filed, the county court shall at the first term thereafter confirm the report, make a reasonable allowance to the freeholders for their services, and order payment to be made of the amount so assessed, of such allowance, of the officers' fees and of what the witnesses may be entitled to for their attendance.

§ 7. If such notice be filed, either party may thereupon take out subpoenas for witnesses; and at the first term at which the same can conveniently be done, the case shall be heard. If either party desire it, a jury may be impanelled to assess the damages; but if this be not asked, the court shall itself hear the witnesses and make such assessment as may seem to it proper. And the court shall give such directions in regard to the costs as it may deem right.

§ 8. If any person shall wilfully injure, deface or remove any signal, monument or building or any appendage thereof, erected, used or constructed under the act of congress afore-

said, such person shall forfeit fifty dollars to any person who shall sue for the same, and shall also be liable to the *United States* for the damages thereby sustained.

Title 2.

CITIZENSHIP.

CHAPTER III.

WHO ARE CITIZENS OF THE STATE, AND HOW CITIZENSHIP IS RELINQUISHED.*

1. *Who are citizens of the state.*

§ 1. All free white persons born in this state, all free white persons born in any other state of this Union, who may be or

² Rand. 276.

⁴ Rand. 585.

⁵ Leigh, 743.

* Former laws of *Virginia*, Hen. Stat. vol. 2. p. 465. Id. vol. 3, p. 434. Id. vol. 10, p. 129, ch. 55. Id. p. 153, ch. 18. Id. vol. 11, p. 322, ch. 16. Id. vol. 12, p. 264, ch. 10. 1 R. C. p. 65, ch. 23; 1825-6, p. 8, ch. 5. Const. U. S. art. 1 § 8, clause 4, *ante*, p. 16. Acts of Congress, 2 Story's Laws of U. S. p. 850, 942, 1304, 1354, 1539, 1973. 1827-8, p. 121, ch. 106.

The act of congress approved April 14, 1802, (2 Story, p. 850,) provides in § 1, that any alien, being a free white person, may be admitted to become a citizen of the *United States*, or any of them, on the following conditions, and not otherwise: *First*, that he shall have declared on oath or affirmation, before the supreme, superior, district or circuit court of some one of the states, or of the territorial districts of the *United States*, or a circuit or district court of the *United States*, *three* years (*two* by act of May 26, 1824, § 4, in 3 Story, p. 1974,) at least before his admission, that it was *bona fide* his intention to become a citizen of the *United States*, and to renounce forever all allegiance and fidelity to any foreign prince, potentate, state or sovereignty whatever, and particularly, by name, the prince, potentate, state or sovereignty, whereof such alien may, at the time, be a citizen or subject. *Secondly*, that he shall, at the time of his application to be admitted, declare on oath or affirmation before some one of the courts aforesaid, that he will support the constitution of the *United States*, and that he doth absolutely and entirely renounce and abjure all allegiance and fidelity to every foreign prince, potentate, state or sovereignty whatever, and particularly, by name, the prince, potentate, state or sovereignty whereof he was before a citizen or subject; which proceedings shall be recorded by the clerk of the court. *Thirdly*, that the court admitting such alien shall be satisfied that he has resided within the *United States*, five years at least, and within the state or territory where such court is at the time held, one year at least; and it shall farther appear to their satisfaction, that during that time he has behaved as a man of a good moral character, attached to the principles of the constitution of the *United States*, and well disposed to the good order and happiness of the same: *provided*, that the oath of the applicant shall in no case be allowed to prove his residence. *Fourthly*, that in case the alien applying to be admitted to citizenship shall have borne any hereditary title or been of any of the orders of nobility in the kingdom or state from which he came, he shall, in addition to the above requisites, make an express renunciation of his title or order of nobility in the court to which his application shall be made, which renunciation shall be recorded in the said court: *provided*, that no alien who shall be a native, citizen, denizen or subject, of any country, state or sovereign with whom the *United States* shall be at war at the time of his application, shall be then admitted to be a citizen of the *United States*.

By § 3 of same act it is enacted, that every court of record in any individual state, having common law jurisdiction and a seal and clerk or prothonotary, shall

become residents of this state, all aliens being free white persons naturalized under the laws of the *United States*, who may be or become residents of this state; all persons who have obtained a right to citizenship under former laws, and all children, wherever born, whose father, or if he be dead, whose mother shall be a citizen of this state, at the time of the birth of such children, shall be deemed citizens of this state.

2. *How citizenship is relinquished.*

2 Munf. 403.
2 Leigh, 170.

§ 2. Whensoever any citizen of this state, by deed in writing, executed in the presence of, and subscribed by, two wit-

be considered as a district court within the meaning of this act; and every alien who may have been naturalized in any such court, shall enjoy, from and after the passing of the act, the same rights and privileges as if he had been naturalized in a district or circuit court of the *United States*. § 3 of the act approved May 26th, 1824, (3 Story, p. 1974,) enacts, that the declaration required by the first condition specified in the first section of the act of 1802, shall, if the same has been *bona fide* made before the clerks of either of the courts in the said condition named, be as valid as if it had been made before the said courts respectively.

The act approved March 3d, 1813, provides in § 12, (2 Story, p. 1304,) that no person who shall arrive in the *United States* from and after the time when this act shall take effect, shall be admitted to become a citizen of the *United States*, who shall not, for the continued term of five years next preceding his admission as aforesaid, have resided within the *United States*, without being, at any time during the said five years, out of the territory of the *United States*.

As to aliens residing within the limits and under the jurisdiction of the *United States*, before the 18th of June 1812, there are special provisions by the latter part of § 1 of the act of 1802, (2 Story, p. 851, 2,) by § 1 of act of March 26th, 1804, (Id. p. 942,) by the act of July 30th, 1813, (Id. p. 1354,) by § 2 of act of March 22d, 1816, (3 Story, p. 1539, 40,) and by § 2 the act of 1827-8, p. 121.

Sec. 4 of the act of 1802 (2 Story, p. 852, 3,) provides that the children of persons duly naturalized under any of the laws of the *United States*, or who, previous to the passing of any law on that subject by the government of the *United States*, may have become citizens of any one of the said states under the laws thereof, being under the age of twenty-one years at the time of their parent's being so naturalized or admitted to the rights of citizenship, shall, if dwelling in the *United States*, be considered as citizens of the *United States*; and the children of persons who now are or have been citizens of the *United States*, shall, though born out of the limits and jurisdiction of the *United States*, be considered as citizens of the *United States*: *provided*, that the right of citizenship shall not descend to persons whose fathers have never resided within the *United States*: *provided also*, that no person heretofore proscribed by any state, or who has been legally convicted of having joined the army of *Great Britain* during the late war, shall be admitted a citizen as aforesaid, without the consent of the legislature of the state in which such person was proscribed.

Sec. 1 of the act of May 26th, 1824, (3 Story, p. 1973,) provides, that any alien, being a free white person and a minor, under the age of twenty-one years, who shall have resided in the *United States* three years next preceding his arriving at the age of twenty-one years, and who shall have continued to reside therein to the time he may make application to be admitted a citizen thereof, may, after he arrives at the age of twenty-one years, and after he shall have resided five years within the *United States*, including the three years of his minority, be admitted a citizen of the *United States*, without having made the declaration required in the first condition of the first section of the act of 1802, three years previous to his admission: *provided* such alien shall make the declaration required therein at the time of his or her admission, and shall further declare on oath, and prove to the satisfaction of the court, that for three years next preceding it has been the *bona fide* intention of such alien to become a citizen of the *United States*, and shall, in all other respects, comply with the laws in regard to naturalization.

Sec. 2 of the act of March 26th, 1804, (2 Story, p. 943,) relates to aliens who have pursued the directions prescribed in the second section of the act of 1802. And § 2 of the act of May 26th, 1824, (3 Story, p. 1973,) relates to omissions to comply with the requisition of the first section of the act of March 22, 1816, in 3 Story, p. 1539. The second section of the act of 1802, and the first section of the act of 1816, are both repealed by the first section of the act of 1827-8, p. 121.

nesses, and by them proved in the court of the county or corporation where he resides, or by open verbal declaration made in such court and entered of record, shall declare that he relinquishes the character of a citizen of this state, and shall depart out of the same, such person shall from the time of such departure be considered as having exercised his right of expatriation, so far as regards this state, and shall thenceforth be deemed no citizen thereof.

§ 3. When any citizen of this state, being twenty-one years of age, shall reside elsewhere, and in good faith become the citizen of some other state of this Union, or the citizen or subject of a foreign state or sovereign, he shall not, while the citizen of another state, or the citizen or subject of a foreign state or sovereign, be deemed a citizen of this state.

§ 4. No such act of becoming the citizen or subject of a foreign state or sovereign, and no act under the second section, shall have any effect if done while this state or the *United States* shall be at war with any foreign power.

Title 3.

ELECTIONS BY THE PEOPLE.*

- CHAP. 4. Apportionment of representation.
5. Places at which elections are to be held.
 6. Of the qualification and privilege of voters.
 7. Of the time of holding elections and the manner of conducting them.
 8. Of the mode of ascertaining and certifying elections.
 9. Meeting of electors of president and vice-president.
 10. Of contested elections.

CHAPTER IV.

APPORTIONMENT OF REPRESENTATION.†

SEC.

1. House of Delegates.
2. State Senate.

SEC.

3. Congress.

* The chapters under this title are in lieu of the following acts in the Code of 1819, to wit: Ch. 48, p. 145; ch. 50, p. 150; part of ch. 51, p. 155; ch. 53, p. 166; part of ch. 54, p. 168; ch. 57, p. 179; ch. 58, p. 180; ch. 59, p. 181; ch. 60, p. 183; ch. 61, p. 184; ch. 62, p. 185; ch. 63, p. 187; also in lieu of the following acts since that Code, to wit: As to the presidential election, 1822-3, p. 42, ch. 41; 1831-2, p. 28, ch. 31; 1832-3, p. 28, ch. 36; and 1843-4, p. 26, ch. 36; as to congressional elections, 1822-3, p. 41, ch. 40; 1832-3, p. 29, ch. 37; 1833-4, p. 60, ch. 24; and 1842-3, p. 30, ch. 42; as to apportionment in legislature, 1841-2, p. 23, ch. 41; as to elections generally, 1827-8, p. 37, ch. 54; 1830-31, p. 15, part of ch. 1; Id. p. 36, ch. 2; 1831-2, p. 27, ch. 30; 1832-3, p. 27, ch. 35; 1833-4, p. 59, ch. 23; 1834-5, p. 26, ch. 26; 1836-7, p. 23, ch. 29; 1838, p. 43, ch. 36, § 1; 1839, p. 24, ch. 33; 1841-2, p. 26, ch. 42, § 3; 1845-6, p. 45, ch. 46; Id. p. 46, ch. 47; as to applications for separate elections, 1833-4, p. 60, ch. 25; and in lieu of the numerous acts since the Code, establishing places for such elections.

† The apportionment of representation in the general assembly is according

The representation of the several counties and corporations of this state in the general assembly shall continue apportioned as it is now, that is to say :

House of delegates.

1830-31, p. 141, ch.
74, § 9.
1835-6, p. 21, ch.
19, § 10.

§ 1. The county of Loudoun shall elect three delegates. The counties of Frederick, Shenandoah, Augusta, Berkeley, Hampshire, Jefferson, Rockingham, Rockbridge, Albemarle, Bedford, Brunswick, Campbell, Fauquier, Franklin, Halifax, Mecklenburg, Pittsylvania, Accomack and Norfolk shall each elect two delegates.

The counties of Monongalia, Marion, Ohio, Taylor, Marshall, Washington, Smyth, Greenbrier, Lee, Floyd, Monroe, Pocahontas, Preston, Russell, Scott, Tazewell, Botetourt, Roanoke, (exclusive of that part of it taken from Montgomery,) Alleghany, Hardy, Morgan, Page, Buckingham, Appomattox, Culpeper, Rappahannock, Amelia, Amherst, Charlotte, Cumberland, Dinwiddie, Fluvanna, Goochland, Henry, Louisa, Lunenburg, Madison, Nelson, Nottoway, Patrick, Powhatan, Prince Edward, Caroline, Chesterfield, Essex, Fairfax, Alexandria, Greenesville, Gloucester, Hanover, Henrico, Isle of Wight, King & Queen, King William, King George, Nansemond, Northumberland, Northampton, Princess Anne, Prince George, Prince William, Southampton, Spottsylvania, Stafford, Sussex, Surry, Westmoreland, the cities of Richmond and Norfolk,* and the town of Petersburg, shall each elect one delegate.

The following shall be election districts, and each elect as follows: Brooke and Hancock, one delegate; Kanawha and so much of Putnam as was taken from Kanawha, one delegate; Harrison and so much of Doddridge as was taken from Harrison, one delegate; Montgomery with so much of Roanoke as was taken from Montgomery, and so much of Pulaski as was taken from Montgomery, one delegate; Wythe and so much of Pulaski as was taken from Wythe, one dele-

to the amended constitution of *Virginia*, except so far as, under the 4th section of the 3d article of the constitution, provision has been made for the representation of counties formed since that constitution was adopted. Such provision is made by the following acts, to wit: 1830-31, p. 134, ch. 70 as to *Fayette*; Id. p. 137, ch. 72, as to *Floyd*; Id. p. 138, ch. 73, as to *Jackson*; Id. p. 140, ch. 74, as to *Page*; 1831-2, p. 47, ch. 67, as to *Smyth*; 1832-3, p. 44, ch. 73, as to *Rappahannock*; 1834-5, p. 38, ch. 57, as to *Marshall*; 1835-6, p. 18, ch. 18, as to *Braxton*; Id. p. 20, ch. 19, as to *Clarke*; Id. p. 22, ch. 20, as to *Warren*; 1836-7, p. 31, ch. 53, as to *Mercer*; 1838, p. 52, ch. 59, as to *Greene*; Id. p. 54, and 1848-9, p. 28, ch. 63, as to *Roanoke*; 1839, p. 30, ch. 50, as to *Pulaski*; 1841-2, p. 32, ch. 58, as to *Carroll*; Id. p. 34, ch. 59, as to *Marion*; Id. p. 36, ch. 60, as to *Wayne*; 1842-3, p. 35, ch. 52, as to *Ritchie*; Id. p. 37, ch. 53, as to *Barbour*; 1843-4, p. 34, ch. 44, as to *Taylor*; 1844-5, p. 38, ch. 41, as to *Appomattox*; Id. p. 42, ch. 42, as to *Doddridge*; Id. p. 45, ch. 43, as to *Gilmer*; 1845-6, p. 51, ch. 65, as to *Wetzel*; 1846-7, p. 41, ch. 53, and 1847-8, p. 29, ch. 56, as to *Alexandria*; 1846-7, p. 49, ch. 55, as to *Boone*; Id. p. 52, ch. 56, as to *Highland*; 1847-8, p. 30, ch. 58, as to *Hancock*; Id. p. 34, ch. 59, as to *Putnam*; Id. p. 38, ch. 60 as to *Wirt*. The apportionment of representation in congress is according to the act of 1842-3, p. 30-31, and such of the acts referred to in this note as have been since passed.

* *Norfolk* borough made a city by act of 1844-5, p. 118, ch. 138.

gate; Cabell and Wayne and so much of Putnam as was taken from Cabell, one delegate; Grayson and Carroll, one delegate; Giles and Mercer, one delegate; Lewis, Braxton and Gilmer, and so much of Doddridge as was taken from Lewis, one delegate; Bath and so much of Highland as was taken from Bath, one delegate; Pendleton and so much of Highland as was taken from Pendleton, one delegate; Mason and Jackson with so much of Putnam as was taken from Mason, and so much of Wirt as was taken from Jackson, one delegate; Logan and Boone, one delegate; Nicholas and Fayette, one delegate; Randolph and Barbour, one delegate; Tyler, Wetzel, and so much of Doddridge as was taken from Tyler, one delegate; Wood, Ritchie, so much of Wirt as was taken from Wood, and so much of Doddridge as was taken from Ritchie, one delegate; Clarke and Warren, one delegate; Orange and Greene, one delegate; Matthews and Middlesex, one delegate; Lancaster and Richmond county, one delegate; Elizabeth City and Warwick, one delegate; James City, York and the City of Williamsburg, one delegate; and New Kent and Charles City, one delegate.

State senate.

§ 2. For the election of senators, the counties and corporations aforesaid shall continue to form districts as follows, that is to say:

Ohio, Marshall, Brooke, Hancock, Tyler, Wetzel, and so much of Doddridge as was taken from Tyler, shall be the first district.

Preston, Monongalia, Marion, Randolph, Barbour, and so much of Taylor as was taken from Marion and Barbour, shall be the second.

Harrison, Wood, Ritchie, Lewis, Braxton, Gilmer, so much of Taylor and Doddridge as was taken from Harrison, so much of Wirt as was taken from Wood, and so much of Doddridge as was taken from Ritchie and Lewis, shall be the third.

Kanawha, Putnam, Mason, Jackson, Cabell, Wayne, Logan, Boone, Nicholas and Fayette, and so much of Wirt as was taken from Jackson, shall be the fourth.

Monroe, Greenbrier, Giles, Mercer, Floyd, Montgomery, with so much of Roanoke as was taken from Montgomery and so much of Pulaski as was taken from Montgomery, shall be the fifth.

Wythe, Tazewell, Smyth, Grayson, Carroll, and so much of Pulaski as was taken from Wythe, shall be the sixth.

Scott, Washington, Russell and Lee, the seventh.

Morgan, Berkeley and Hampshire, the eighth.

Frederick, Jefferson and Clarke, the ninth.

Shenandoah, Page, Warren and Hardy, the tenth.

Rockingham and Pendleton, the eleventh.

Augusta and Rockbridge, the twelfth.

Alleghany, Bath, Highland, Pocahontas, Botetourt and Roanoke, except that part of it taken from Montgomery, the thirteenth.

Loudoun, Alexandria and Fairfax, the fourteenth.

Fauquier and Prince William, the fifteenth.

Westmoreland, Stafford, King George, Lancaster, Northumberland and the county of Richmond, the sixteenth.

Madison, Culpeper, Rappahannock, Orange and Greene, the seventeenth.

Nelson, Albemarle and Amherst, the eighteenth.

Goochland, Fluvanna, Louisa and Hanover, the nineteenth.

Caroline, Spottsylvania and Essex, the twentieth.

Middlesex, King and Queen, King William, Gloucester and Matthews, the twenty-first.

Elizabeth City, Accomack, Northampton, York, Warwick and the City of Williamsburg, the twenty-second.

New Kent, Charles City, James City, Henrico and the City of Richmond, the twenty-third.

Bedford and Franklin, the twenty-fourth.

Buckingham, Campbell, Cumberland and so much of Appomattox as was taken from Buckingham and Campbell, the twenty-fifth.

Henry, Patrick and Pittsylvania, the twenty-sixth.

Halifax and Mecklenburg, the twenty-seventh.

Prince Edward, Charlotte, Lunenburg, Nottoway and so much of Appomattox as was taken from Charlotte and Prince Edward, the twenty-eighth.

Chesterfield, Amelia, Powhatan and the town of Petersburg, the twenty-ninth.

Greensville, Brunswick and Dinwiddie, the thirtieth.

Sussex, Isle of Wight, Prince George, Southampton and Surry, the thirty-first.

Norfolk County and City, Nansemond and Princess Anne, the thirty-second.

Each of said districts shall elect one senator.

Representation in congress.

§ 3. The number of members to which this state is entitled in the house of representatives of the *United States* shall continue apportioned amongst the several counties and corporations of the state, arranged into fifteen districts numbered as follows, that is to say :

Isle of Wight, Nansemond, Princess Anne, Sussex, Surry, Southampton, Norfolk County and the City of Norfolk, shall be the first district.

Nottoway, Greensville, Mecklenburg, Brunswick, Amelia, Dinwiddie, Prince George and the town of Petersburg, the second.

Pittsylvania, Henry, Patrick, Franklin and Halifax, the third.

Campbell, Buckingham, Appomattox, Charlotte, Prince Edward, Cumberland, Fluvanna and Lunenburg, the fourth.

Albemarle, Nelson, Bedford, Greene, Orange, Amherst and Madison, the fifth.

Henrico, Chesterfield, Powhatan, Hanover, Louisa, Goochland and the City of Richmond, the sixth.

York, Accomac, Northampton, Elizabeth City, Warwick, James City, New Kent, Charles City, Matthews, Gloucester, Lancaster, Northumberland and the City of Williamsburg, the seventh.

Essex, Middlesex, King & Queen, Westmoreland, Caroline, Spottsylvania, King George, King William, and the county of Richmond, the eighth.

Fauquier, Stafford, Rappahannock, Prince William, Fairfax, Loudoun, Alexandria and Culpeper, the ninth.

Frederick, Hampshire, Morgan, Berkeley, Jefferson, Clarke, Warren and Page, the tenth.

Rockingham, Hardy, Pendleton, Rockbridge, Augusta and Shenandoah, the eleventh.

Monroe, Botetourt, Roanoke, Montgomery, Pulaski, Floyd, Giles, Mercer, Greenbrier, Pocahontas, Logan, Boone, Bath, Highland and Alleghany, the twelfth.

Washington, Lee, Scott, Russell, Smyth, Wythe, Grayson, Carroll and Tazewell, the thirteenth.

Kanawha, Putnam, Jackson, Mason, Cabell, Wayne, Lewis, Harrison, Braxton, Gilmer, Wood, Wirt, Fayette, Nicholas and Ritchie, with so much of the county of Barbour as was taken from the counties of Harrison and Lewis, so much of the county of Taylor as was taken from the counties of Harrison and Barbour, and so much of the county of Doddridge as was taken from the counties of Harrison, Ritchie and Lewis, shall be the fourteenth.

The counties of Monongalia, Brooke, Hancock, Ohio, Marshall, Tyler, Wetzel, Marion, Randolph and Preston, with so much of the county of Barbour as was taken from the county of Randolph, so much of the county of Taylor as was taken from the county of Marion, and so much of the county of Doddridge as was taken from the county of Tyler, shall be the fifteenth.

And each of said districts shall choose one representative of this state in congress.

CHAPTER V.

Places at which elections are held.

§ 1. In elections for members of the general assembly, for representatives in congress, and for electors of president and

1 R. C. p. 179 to 188, ch. 57 to 63; and subsequent acts.

vice president, polls shall be opened at the courthouses of the several counties and corporations, and at all the other places at which separate polls may be required to be opened by the various laws in force on the day before the provisions of this chapter go into operation.

1833-4, p. 60, ch. 25.

§ 2. No bill to establish or discontinue a separate poll in any county shall be considered by the general assembly, unless there be a petition to the assembly for the same from citizens of such county, nor unless notice of the intention to present such petition has been posted at the front door of the courthouse of the county, on a court day, at least two months before the session of the assembly.

CHAPTER VI.

OF THE QUALIFICATION AND PRIVILEGE OF VOTERS.

SEC.

1. } Persons qualified to vote under old
2. } constitution.
3. Who, in addition, may vote under new constitution.
4. How a parcel of land is voted on which runs into several counties.
5. } As to joint owners of land under
6. } new constitution.
7. }

SEC.

8. Relative to joint owners of land under either constitution.
9. Property in a town entitled to a delegate does not authorize a vote in county containing such town.
10. } Against double or other illegal vo-
11. } ting.

Persons qualified to vote under old constitution.

Const. U. S. art. 1, § 2, clause 1;
art. 2 § 1, clause 2.
12 Hen. Stat. p. 120, 21.
1 R. C. p. 155, ch. 51, § 3.
Const. Va. art. 3, § 14.

1830-31, p. 1, ch. 1, § 3.
1831-2, p. 27, ch. 30.
1843-4, p. 26, ch. 36, § 2.

In all elections for members of the general assembly, representatives in congress, and electors of president and vice president of the *United States*, the following persons shall be entitled to vote, viz :

§ 1. Every white male citizen of this commonwealth, resident therein, aged twenty-one years and upwards, and not having refused to give assurance of fidelity to the commonwealth, being possessed, or whose tenant for years, at will or at sufferance, is possessed, of twenty-five acres of land, with a house the superficial content of the foundation whereof is twelve feet square, or equal to that quantity, and a plantation thereon; or fifty acres of unimproved land; or a lot, or part of a lot of land in a city or town established by act of the general assembly, with a house thereon of the like superficial content or quantity, having in such land an estate of freehold at the least, and (unless the title shall have come to him by descent, devise, marriage or marriage settlement,) having been so possessed six months, shall be qualified to vote in the county, city, or town in which the land lieth. If the fifty acres of land, being one entire parcel, lie in several counties, the holder shall

vote in that county wherein the greater part of the land lieth; and if the twenty-five acres of land, being one entire parcel, lie in several counties, he shall vote in that county wherein the house standeth. In right of land held by parceners, joint tenants, or tenants in common, qualified to exercise the right of suffrage according to the former constitution and laws, but one vote shall be given by all the holders capable of voting who may be present and agree to vote for the same person, unless the quantity of land, in case partition had been made thereof, be sufficient to entitle every holder to vote separately.

§ 2. Every such citizen having such a freehold as is described in the preceding section, in the City of *Williamsburg* or *Norfolk*, or who shall be a housekeeper, and shall have resided for six months in such city, and shall be possessed of a visible estate of the value of one hundred and sixty-six dollars sixty-six cents, at least; or shall actually have served as an apprentice to some trade within the said city, for the term of five years, and shall have obtained a certificate of such service from the court of hustings, under the common seal of the city, shall be qualified to vote in the said city.

1 R. C. p. 156, § 4.
1830-31, p. 16, ch.
1, § 4.

Who, in addition, may vote under new constitution.

§ 3. Every citizen entitled to exercise the right of suffrage according to the fourteenth section of the third article of the constitution, shall be qualified to vote in the manner therein prescribed in all the elections above mentioned.

1830-31, p. 16, ch.
1, § 5.

How a parcel of land is voted on which runs into several counties.

§ 4. If the land referred to in the said section of the present constitution, being one entire parcel, be in several counties, and be insufficient in value to entitle the person interested therein to vote in all the said counties, such person shall vote in that county wherein the greater part of the land lieth; and any person entitled to vote on a reversion or vested remainder in fee, expectant on an estate for life, in land, which being one entire parcel, may lie in several counties and be insufficient in value to entitle such person to vote in all the said counties, shall vote in that county wherein the greater part of the land lieth.

As to joint owners of land under new constitution.

§ 5. Tenants in common, joint tenants or parceners in possession, reversion or remainder, not having the right of suffrage by the former constitution and laws, but having an interest in land, the value whereof is insufficient to entitle them all to vote, shall vote in right of such land in manner following: If the value of the land be sufficient to entitle them to one vote only, the same shall be given by all the said tenants in

1a.

common, joint tenants or parceners, capable of voting, who may be present and agree to vote for the same person; if the value of the land be sufficient to entitle them to more than one vote, as many votes as they are entitled to from the value of the land, according to the constitution, shall be given by all of them capable of voting, who may be present and agree for whom the said votes shall be given; the number of votes, however, not to exceed in any case the number of such tenants or parceners present.

1830-31, p. 16,
ch. 1, § 5.

§ 6. When a vote or votes shall have been given in right of land held by tenants in common, joint tenants or parceners, the value whereof is insufficient to entitle them all to vote, if any cotenant or coparcener, capable of voting, not having been present and agreed thereto when said vote or votes were given, should afterwards appear at the election, and, before the taking of the votes is at an end, object to the votes as given, the same shall be stricken from the poll.

Id.

§ 7. When in right of land held by tenants in common, joint tenants or parceners, more votes are given than is authorized by the value of the land as it appears assessed on the books of the commissioner of the revenue, all the votes given by virtue of such land shall be stricken from the poll except in the following cases: If they be all for the same person, so many of the votes shall stand as the value of the land authorizes, but no more. In case the votes be for different persons, and amongst them there is any vote which appears on the face of the poll to have been given by agreement of all the tenants and parceners capable of voting, expressed in person at the time of the vote, such vote shall be suffered to stand if authorized by the value of the land.

Relative to joint owners of land under either constitution.

Id.

§ 8. In case of tenants in common, joint tenants or parceners in possession, reversion or remainder, having an interest in land, the quantity or value whereof is insufficient to entitle them all to vote, if some one or more of them may lawfully vote in right of other land in the same county or corporation, the others may vote in the same manner as if he or they holding such other land had no interest whatever in the undivided land.

Property in a town entitled to a delegate, does not authorize a vote in county containing the town.

1 R. C. p. 156, § 4.
1830-31, p. 17, ch.
1, § 7.

§ 9. In any corporation which, since the eighth day of January seventeen hundred and eighty-eight, hath obtained, or shall obtain the privilege of sending, in its own right, a representative to the house of delegates, the voters thereof shall be incapable of voting in the election for any county in virtue or right of the property held by them, respectively, within such corporation.

Against double or other illegal voting.

§ 10. No person shall vote more than once in the same election, and whether one or several elections be held at the same time, he shall not be polled in the same county, corporation or election district a second time, though he may not, when first polled, have voted in all the elections then held, or for as many persons as he then might. 1830-31, p. 1, 23, § 2, 17.

§ 11. If any person shall vote more than once in the same election, or if any person shall vote on the ground of his having paid a part of the revenue of the commonwealth when he had by his own procurement been falsely assessed therewith, or if any person shall give a vote at any election, when he knows himself not to be entitled to give such vote, he shall forfeit thirty dollars; and in the case of a person voting more than once in the same election, all his votes except one shall be stricken from the poll. Id. p. 18, § 9. 1845-6, p. 46, § 1.

CHAPTER VII.

OF THE TIME OF HOLDING ELECTIONS AND THE MANNER OF CONDUCTING THEM.

SEC.

1. Time of holding elections.
2. How long poll is to be open.
3. Commissioners to superintend elections of members of the assembly and of congress.
4. } Commissioners for presidential
5. } election.
6. Power and duty of commissioners who superintend any election.
7. Oath of commissioners.
8. In case commissioners fail to attend.

SEC.

9. Duty of sheriff or sergeant.
10. Oath of sheriff or sergeant.
11. }
12. } Concerning elections to fill va-
13. } cancies.
14. }
15. In case sheriff or sergeant fail to attend election.
16. }
17. } Penalties on officers and commis-
18. } sioners for violations of duty.
19. }
20. } Evidence to ascertain right to vote.

Time of holding elections.

§ 1. Elections shall be held in the several counties and corporations entitled to representation, for the election of delegates, and of the eight senators for one of the four classes of senatorial districts, in the room of those annually displaced, on the fourth Thursday in April of every year; for the election of representatives in congress, on the fourth Thursday in April, in the year eighteen hundred and fifty-one, and on the same day in every second year thereafter; and for choosing electors of president and vice-president of the *United States*, on the Tuesday next after the first Monday in November, or such 1830-31, ch. 1, § 1. 1839, p. 24, ch. 33, § 1. 1843-4, p. 26, ch. 36, § 2.

other time as congress may determine* in the year eighteen hundred and fifty-two, and in every fourth year thereafter.

How long poll is to be open.

1830-31, p. 23,
§ 17.
1831-2, p. 27, ch.
31, § 2.
1843-4, p. 28, ch.
36, § 3.

§ 2. The poll shall not be opened at any election sooner than sunrise, and shall be closed at sunset. But if the electors who appear at any place of voting cannot all be polled before sunset, or if it shall appear to the commissioners that many of those entitled to vote were prevented from attending by rain or rise of water courses, they shall keep the poll open for three days, including the first.

Commissioners to superintend elections of members of the assembly and of congress.

1830-31, p. 33, ch.
1, § 46.
1833-4, p. 59, ch.
23, § 4.

§ 3. The court of each county, and the court for each of the corporations of *Richmond, Norfolk, Petersburg and Williamsburg*, shall annually, before the general election day, appoint five freeholders as commissioners at the courthouses, and the like number for each place in the county or corporation at which a separate poll is to be opened, to superintend the elections of members of the general assembly and representatives in congress which may be held in the county or corporation on the said general election day. Any two or more of the said commissioners may act.

Commissioners for presidential election.

1843-4, p. 27, ch.
36, § 2.

§ 4. For superintending the election of electors of president and vice president of the *United States*, the governor shall, on or before the first day of August in every year in which such election is to be held, appoint three persons in each county, and in each of the corporations of *Richmond, Norfolk, Petersburg and Williamsburg*, as commissioners, any two or more of whom may act, to superintend the elections at the courthouses of the several counties and corporations aforesaid.

Id. p. 29, § 5.

§ 5. The commissioners appointed by the governor in each county or corporation, shall appoint three commissioners for each place therein at which a separate poll is to be taken, (any two or more of whom may act,) to superintend the elections at such places.

* The act of congress, approved the 23d of January 1845, (Sess. Acts 1844-5, p. 5,) provides, "That the electors of president and vice-president shall be appointed in each state on the Tuesday next after the first Monday in the month of November of the year in which they are to be appointed: *provided* that each state may by law provide for the filling of any vacancy or vacancies which may occur in its college of electors when such college meets to give its electoral vote: *and provided also*, when any state shall have held an election for the purpose of choosing electors, and shall fail to make a choice on the day aforesaid, then the electors may be appointed on a subsequent day in such manner as the state shall by law provide."

Powers and duties of commissioners.

§ 6. The commissioners appointed to superintend any of the elections before mentioned, whether at the courthouse or a place for taking a separate poll, shall attend accordingly. They shall admit all persons to vote entitled to do so, and reject the votes of all not entitled, and in all respects have the poll taken fairly according to law. They may swear any person to answer questions in relation to any right to vote which is claimed; and the name of any person offering to vote but rejected by them, if required by the voter or any candidate, shall be entered in a separate list on the poll, with the names of the persons for whom he wished to vote.

1830-31, p. 18,
§ 11, 21; p. 33,
§ 46, 7.
1843-4, p. 27, ch
36, § 2.

Oath of commissioners.

§ 7. Every such commissioner shall, before he enters upon the discharge of his duties, take an oath faithfully to execute the office of commissioner; which oath may be administered by a justice or the officer appointed to conduct the election, who shall return a certificate thereof to the clerk of the county or corporation court, to be preserved in his office.

1830-31, p. 34, ch.
1, § 54.
1838, p. 43, ch. 36,
§ 1.
1843-4, p. 27, § 3,
and p. 30, § 5.

In case commissioners fail to attend.

§ 8. If only one of said commissioners shall attend and be willing to act, he may associate with himself as a commissioner any attorney for the commonwealth residing in the county or corporation, or any justice thereof who may be present and agree to act, and if there be none such, any freeholder who may be present. And if none of the commissioners attend, or none should have been appointed, then any two justices willing to act shall be commissioners; and if there be not two such justices present, then any three freeholders present and agreeing to act shall be commissioners. Any such commissioner appointed or agreeing to act in the manner provided by this section, shall take the same oath, perform the same duties, and be subject to the same penalties, as if he had been originally appointed a commissioner.

1830-31, p. 33, §
46; p. 34, § 51.
1843-4, p. 30, ch.
36, § 6.

Duty of sheriff or sergeant.

§ 9. Under the superintendence and control of the commissioners, it shall be the duty of the sheriff of every county, and the sergeant of each of the corporations of *Richmond, Norfolk, Petersburg* and *Williamsburg*, in person or by deputy, to cause the polls to be opened publicly for every election, at the several places of election in his county or corporation; to proclaim, and see recorded, the votes admitted by the commissioners; to preserve order and remove force. The said officer shall appoint so many writers as he shall think fit, who shall

1830-31, p. 19,
§ 12.
1843-4, p. 31, ch.
36, § 6.

respectively take an oath, to be administered by said officer, to record the votes faithfully and impartially. He shall deliver a poll book to each writer, who shall enter the name of each voter in a column under the name of each person for whom he votes. And in an election for electors of president and vice-president, the said officer shall receive of each voter a paper or ticket, containing the names of as many persons for electors as the state may be entitled to for the time being; the name of the voter shall be written on the back of the paper; and he shall also declare, *viva voce*, for whom he votes as electors, either by repeating the name of each person voted for, or by any other distinct designation of them collectively. After the names of all the voters offering to vote before the time for closing the election, shall have been thus entered, the officer shall conclude the poll. Immediately on the conclusion thereof, the correctness of the poll shall be certified by the commissioners superintending the election, and by the officer conducting the same. The officers conducting the election at places other than the courthouse, shall report and deliver the poll within five days after the commencement of the election to the officer conducting the election at the courthouse, except in the case of an election for electors of president and vice-president, and in such case to the commissioners at the courthouse.

Oath of sheriff or other officer.

1830-31, p. 18,
§ 11.

§ 10. Every sheriff, sergeant or other officer, before he commences taking the poll in any election, shall take an oath to the following effect: *I do solemnly swear, that in conducting the election about to be held, I will not attempt to influence the vote of any person, or be guilty of any partiality for any candidate or person voted for; and, as far as depends on me, I will make a true return of the result of the election according to law. So help me God.* A certificate of said oath shall be returned by the justice administering it, to the clerk of the county or corporation court, to be by him preserved.

Concerning elections to fill vacancies.

Const. U. S. art. 1,
§ 2, clause 4.
1830-31, p. 26, ch.
1, § 28.

§ 11. Elections to fill vacancies in the general assembly, or in the representation from this state in congress, shall be superintended and held by the same officers, under the same penalties and subject to the same regulations, as are prescribed for the general elections. The commissioners appointed to superintend the preceding general elections shall also superintend all elections to fill vacancies. A writ of election to fill a vacancy in the general assembly shall be issued by the governor, when the vacancy occurs by death, or resignation, during the recess of the assembly, and by the speaker of the house in which a vacancy occurs, when it happens during the session of the assembly.

§ 12. A writ of election shall be directed to the sheriff or sergeant of the county or corporation for which the election is to be held; or if the election is to be held for an election district, or to fill a vacancy in the senate or in congress, to the several sheriffs and sergeants of the counties and corporations which, or any parts of which, are included in the district. It shall prescribe the day of election, (to be the same throughout the district,) and may fix a day on which the officers conducting the election are to meet to make returns, not later than that fixed by law in the case of a regular election.

§ 13. Each officer to whom a writ of election is directed shall give notice thereof, and of the time of the election, by advertisement at four of the most suitable places in his county or corporation.

§ 14. When a vacancy shall occur in the representation of any county, or any district embracing a county or part of a county, which shall have been divided after the regular election, the vacancy shall be filled by the same voters who would have been entitled to fill the same if no such division had taken place; and the writs of election shall be directed, and the returning officers meet as if there had been no such division.

In case sheriff or sergeant fail to attend election.

§ 15. If the sheriff or sergeant shall not attend in person or by deputy at any place for holding an election, the commissioners may appoint some person to perform the duties of an officer in respect to the election.

Penalties on commissioners and officers for violations of duty.

§ 16. Any sheriff or sergeant who shall fail at the time of any election to attend in person or by deputy, and act in respect to the election at the courthouse and every other place in the county or corporation at which a poll is required to be taken, shall forfeit the sum of one hundred dollars, for each place at which such failure shall occur. If the sheriff or sergeant be dead at the time of such election, his deputies then remaining in office shall discharge the duties prescribed to the sheriff or sergeant; and in case of failure on the part of said deputies remaining or being in office at the time of the election, to attend and act at as many places of election as there are deputies in office, each deputy failing to attend and act shall forfeit the like sum.

17. If any commissioner or officer, whose duty it may be, shall refuse to take the poll, when he shall be required by a candidate or voter, or take it unfairly, or make a false certificate or return, or neglect to deliver the polls or to make a return at the time and in the mode prescribed by law, or refuse to permit any candidate or voter, at his own expense,

to take a copy of the poll, every such person, for every such offence, shall forfeit three hundred dollars.

1830-31, p. 29, § 33.
See post. ch. 8,
§ 12.

§ 18. If any commissioner or officer, while acting as such in any election, shall shew undue partiality, he shall forfeit six hundred dollars.

Evidence to ascertain right to vote.

1831-2, p. 28, ch.
31, § 3.

§ 19. The clerk of each county and corporation shall attend at every election at his courthouse, with the latest land books, and with the books of personal property for the preceding year returned to his office by the commissioner of the revenue. The commissioner shall attend with the original, and the sheriff or other officer shall attend with his copy of the said books at such of the places, at which a separate poll is to be taken in the county or corporation, as the court thereof may direct. And if there be more places of separate polls than can be so attended, the court may direct its clerk to copy, at the expense of the county or corporation, for the commissioners at every other such place, the said books, or so much thereof as it may seem to the court the commissioners at each of the said other places should have. The said copies shall be delivered by the clerk to the commissioners for whom the same are intended, at least five days before the day of the annual election. And such books and copies shall be used by the commissioners respectively as evidence towards ascertaining the right of any person to vote.

1832-3, p. 27, ch.
35, § 2.
1845-6, p. 46, ch.
47, § 2.
1847-8, p. 17, ch.
20.

§ 20. The sheriff or other collector of the public revenue shall cause to be made out within the three days next preceding every election, and furnished to the commissioners for each place of election in his county or corporation, a list of all persons therein who shall not have paid all the revenue assessed against them for the year next preceding, specifying the items and amount of revenue charged against each person. But if any person shall have paid any money on account of revenue tax and county levy generally, it shall be applied first to the payment of the revenue tax; and the officer conducting any election shall receive the revenue tax which may be offered to be paid by any person wishing to vote, and shall note that fact and the amount on the back of the poll, and pay to the clerk of his county or corporation court so much of what may be so received as may be on account of taxes returned delinquent, and the residue to the sheriff, if he be not himself the officer conducting the election.

See post, ch. 36,
§ 19, as amended.

CHAPTER VIII.

OF THE MODE OF ASCERTAINING AND CERTIFYING ELECTIONS.

SEC.	SEC.
1. } Time for examining polls of one	8. Poll books to be returned to clerk's office.
2. } county or town.	9. Return of election for electors of president and vice-president.
3. Time for examining polls of a district.	10. Governor to ascertain and proclaim who are chosen electors.
4. Return of election to general assembly or to congress.	11. What is to be done with tickets and polls, and how expense of transmitting returns or tickets is defrayed.
5. What officers attend, where parts of same county are in different districts.	12. Penalty on commissioner or officer for failure in duty.
6. What officer may attend generally; and provision for non-attendance.	
7. Compensation of officer attending.	

Time for examining polls of one county or town.

§ 1. In the case of an election for electors of president and vice-president, the commissioners superintending the election at the courthouse, and in the case of any other election, the officer conducting the same at the courthouse, shall, within six days from the commencement of the election, examine and compare the several polls taken in the county or corporation, strike therefrom any votes which are by law directed to be stricken from the same, and attach to the poll a list of the votes stricken therefrom and the reasons therefor. The result of the election shall then be ascertained, declared and certified in the manner following, that is to say:

§ 2. In an election of a delegate or delegates for a county or corporation having separate representation, the said officer shall declare the person or persons for whom the greatest number of votes was given to be elected; or if the greatest number of votes be equal for two or more persons, he shall declare to which of them he will give the certificate of election, notwithstanding he may have previously voted; and he shall forthwith set up at the front door of the courthouse a notice of the said election.

Time for examining polls of a district.

§ 3. In cases of elections for election districts or senatorial or congressional districts, the officers conducting the election at the courthouses of the several counties or corporations forming such district, shall meet at the courthouse of the county or corporation first mentioned in the law describing such districts, on a certain day after that appointed by law for the commencement of such election; which certain day, in the case of an election from a district, of a delegate, shall be the eighth, of a senator shall be the twelfth, and of a representative in congress shall be the fifteenth, after such commence-

1830-31, p. 19, ch. 1, § 12.

Id. § 12, 13.

1 R. C. p. 152, ch. 50, § 5, 8.
1830-31, p. 1, ch. 1, § 1, 15, 16.

ment. They shall carry with them copies of the polls of their respective counties and corporations, compare the same, and after striking therefrom such votes as are required by law to be stricken therefrom, and attaching to the poll a list of the votes stricken therefrom, and the reasons for the same, shall declare elected the person having the greatest number of votes in the whole district. If the greatest number of votes be equal for two or more persons, the officers attending shall decide to which of them they will give the certificate of election; and if the votes of said officers be equal also, they shall decide forthwith by lot to whom such certificate shall be given. A notice of said election shall be forthwith given at the door of the courthouse where the meeting is held. In cases of special elections to supply vacancies, the time for the meeting of the returning officers shall be earlier, if required in the writ of election.

Return of election to general assembly or to congress.

1 R. C. p. 152, ch.
50, § 5.
1830-31, p. 25, 6,
§ 22, 23, 24, 25,
26, 27, 28.

§ 4. So soon as the result of any election for a member of the assembly or a representative in congress shall have been thus ascertained and declared, the officer or officers so ascertaining it shall make out returns of such election to the following effect, viz: *It is hereby certified that we (or I,) sheriff of* _____ *county, &c. (or deputy of* _____ *sheriff or sergeant of* _____ *), at an election held on the* _____ *day of* _____ *, in my county of* _____ *, or the several counties comprising an election district, (or senatorial or congressional district,) by the electors of our several counties, (or my county, or city, or town,) qualified according to law, caused to be chosen a delegate, (or delegates, senator or representative,) of said (county or) district, namely,* _____ *, to represent the same in the general assembly (or congress.) Given under my (or our) hand, the day and year aforesaid.* One of said returns shall be immediately sent to the governor, one delivered to each person elected, and one attached to the poll of the county or corporation, at the courthouse whereof the return is made.

What officers attend, where parts of same county are in different districts.

§ 5. Where parts of the same county belong to different districts, the officers conducting elections at places not belonging to the same district as the courthouse of such county, shall meet with the returning officers of the district to which such places of election are attached, and report the poll, and unite in the returns in the same way as if they were officers conducting the election at a courthouse.

What officer may attend generally; and provision for non-attendance.

§ 6. If any officer fail to attend at the time and place prescribed by the third section of this chapter, the business shall stand adjourned from day to day until such attendance is had and the returns made. Whether the officer conducting the election at the courthouse was the sheriff or sergeant himself, or was a deputy, the duty of so attending may be performed in any case either by the principal himself, or by any of his deputies. And if the sheriff or sergeant die before such attendance is had, the duty of so attending shall be performed by such person as is authorized to perform other official duties of the sheriff or sergeant.

1830-31, p. 1, § 1;
p. 35, § 56.

Compensation of officer attending.

§ 7. Any officer attending at the time and place prescribed by the said third section shall be allowed one dollar and sixty-seven cents per day for each day that it may be necessary for him to attend, to perform the duty thereby prescribed, and four cents per mile for travelling to and from the place meeting, besides ferriages, to be paid out of the treasury.

1830-31, p. 30,
§ 40.

Poll books to be returned to clerk's office.

§ 8. Either before, or immediately after, the returns are made according to the fourth section, the officer of each county or corporation shall deliver to the clerk of the court thereof, a book or books containing the poll for each election, and at each place of election in such county or corporation, to be filed and preserved in the clerk's office. Any person shall be permitted at his own expense to have a copy made of any poll while in the possession of either the officer or the clerk.

1830-31, p. 22,
§ 14.
1833-4, p. 59, ch.
23, § 2.

Return of election for electors of president and vice-president.

§ 9. The commissioners superintending an election at the courthouse for electors of president and vice-president, after performing the duty required of them by the first section, shall make out three returns in the following form: *We, A. B. &c., commissioners for holding the election for electors of president and vice-president of the United States, for the county (or corporation) of _____, do hereby certify that an election was held on the _____ for the said county, (or corporation) pursuant to law, and that the number of votes herein specified opposite to the names of the several persons following, was given for such persons as electors for the state of Virginia, of a president and vice-president of the United States, namely. (Here the list of the names of electors and votes is to follow.) Given under our hands this _____ day of _____, in the year one thousand eight hundred and _____.* Which returns, written in words and

1843-4, p. 28, ch.
36, § 3.

not in figures, shall be signed by the commissioners. One of said returns shall be delivered to one of the persons voted for having the largest number of votes; one shall be filed in the clerk's office of the county or corporation; and the third shall be sent to the governor within ten days from the commencement of said election.

Governor to ascertain and proclaim who are chosen electors.

1843-4, p. 29, ch.
36, § 3.

§ 10. From the returns so made out and transmitted to him, the governor shall ascertain what persons are elected, and make proclamation of the fact, and also notify them in writing of their election. If, instead of its appearing that the precise number of electors to which the state is entitled, has been elected, it shall appear that more than that number of persons have an equal number of votes as electors, or that only part of the number of electors to which the state is entitled is elected, and an equal number of votes given for more persons than are required to complete the said number of electors, the governor shall decide between those having an equal number of votes, and declare and proclaim accordingly which of them are elected.

What is done with tickets and polls; and how expense of transmitting returns or tickets is defrayed.

Id. p. 31, § 11, p
28, § 3.

§ 11. The tickets handed in by the voters shall be kept by the commissioners under their seal, and shall never be opened or examined by less than two of said commissioners. After the return shall be made, the commissioners shall seal up all the tickets by them received and endorse their names on the envelope. They shall be thus preserved by one of the commissioners, and shall, if demanded by the governor within six months after the said election, be delivered forthwith. The governor is authorized to direct the payment out of the treasury of all reasonable expenses which may be incurred in transmitting said returns or said tickets to the executive, whenever it may be necessary to employ a special messenger for that purpose. The said commissioners appointed by the governor, after ascertaining the number of votes given for each person at the courthouse, and at the places of separate election, and after subscribing the poll taken at the courthouse, shall deliver the said poll, and the polls taken at each place of separate election, to the clerk of the county or corporation, to be preserved in the clerk's office.

Penalty on commissioner or officer for failure in duty.

1830-31, p. 35,
§ 57.

§ 12. Any commissioner or officer failing to perform any duty required by this chapter, or that next preceding, for failing to perform which no specific penalty is prescribed, shall, for such failure, forfeit one hundred dollars.

CHAPTER IX.

MEETING OF ELECTORS OF PRESIDENT AND VICE-PRESIDENT.

§ 1. The persons chosen as electors of president and vice-president, shall meet at the capitol in the city of *Richmond* on the day determined by congress,* and shall then and there give their votes, and make, certify and transmit lists thereof, in the manner prescribed by the constitution and laws of the *United States*. If any of the said electors, so chosen, shall fail to attend by ten o'clock in the morning of the said day, the electors present shall supply the vacancy by appointing an elector in the place of each one so failing to attend, and every elector so appointed, shall be entitled to vote in the same manner as if he had been originally chosen by the people.

1831-2, p. 31, ch. 31, § 7.
1843-4, p. 31, ch. 36, § 8.

§ 2. Each elector shall be allowed the same pay and mileage that may at the time be allowed by law to members of the general assembly. But no elector who may be at the capitol at the same time as a member of the general assembly, shall receive any thing in addition to his pay and mileage as such member.

1843-4, p. 31, ch. 36, § 9.

CHAPTER X.

OF CONTESTED ELECTIONS.

SEC.

1. Notice of contest; and as to votes and objections.
2. Within what time depositions must be taken.
3. Provision for case of special election.
4. Invalidity of depositions not taken in due time.

SEC.

5. } How notice is given, and how de-
6. } positions are taken and disposed
7. } of.
7. How witnesses are paid, or compelled to attend.
8. Time for presenting petition to the house.
9. As to investigation before the house.

Notice of contest; and as to votes and objections.

§ 1. Any person intending to contest the election of another as a senator or delegate to the general assembly, shall, within twenty-five days after the day on which the election commenced, give to the other notice thereof in writing, and a list of the votes he will dispute, with his objections to each, and of the votes improperly rejected for which he will contend. If he object to the legality of the election, or eligibility of the person elected, the notice shall set forth the objections; and

1830-31, p. 31, § 41.
1834-5, p. 26, ch. 26, § 4.

* The act of congress, approved March 1st, 1792, provides that the electors shall meet and give their votes on the first Wednesday in December. See 1 Story's Laws U. S. p. 220, § 2.

the person whose election is contested shall, within twenty days after receiving such notice, deliver to his adversary a like list of the votes which he will dispute, with his objections, and of the votes improperly rejected which he will claim, and notice of his objections, if any he has, to the eligibility of the contesting party. Each party shall append to the list of votes he intends to dispute or claim, an oath to the following effect: *I do swear that I have reason to believe the persons whose names are above mentioned are not legally qualified* (or are qualified, as the case may be,) *to vote in the county of* (or corporation, or district of).

Within what time depositions must be taken.

1830-31, p. 31, § 43. § 2. The contesting party and the person whose right is contested shall, respectively, begin to take depositions within one month after the delivery of the notice aforesaid by the contesting party; and they shall finish taking the same at least thirty days preceding the commencement of the ensuing session of the general assembly.

Provision for case of special election.

Id. § 3. Where, however, such contest arises upon a special election to fill a vacancy, held at any other time than the general election day, the notice, with specifications as above, shall be given by the contesting party within ten days after the conclusion of the election, and by the party whose right is contested within five days after receiving such notice; and they shall, respectively, begin to take depositions within ten days, and finish them within twenty days, after the conclusion of the election, unless further time shall be allowed by a resolution of the house in which the contest exists; or unless the legislature shall adjourn before the time aforesaid expired, in which case the parties may continue to take depositions until within thirty days of the next meeting of the general assembly.

Invalidity of depositions not taken in due time.

Id. § 4. Neither party shall have the benefit of any depositions not taken within the times above described and limited, except where further time shall be given by resolution of the proper house as aforesaid.

How notice is given and how depositions are taken and disposed of.

1830-31, p. 31, 2, § 42, 43, 44. 1834-5, p. 26, ch. 26, § 1, 2, 3. § 5. Any notice required by this or any other chapter relating to elections, may be given, and the lists before mentioned may be delivered, in the mode prescribed for giving notices on legal occasions. Every deposition before mentioned shall be taken, after reasonable notice, before a justice or notary public, who

shall certify and seal up the same, in like manner as if the deposition was in a civil suit, and direct the same to the clerk of the house in which the seat is contested.

§ 6. The clerk of the house shall deliver all such depositions to the speaker thereof, to be committed with the petition of the party contesting. ^{1830-31, p. 32, § 44.}

How witnesses are paid or compelled to attend.

§ 7. Subpoenas for witnesses shall be issued by the clerks of the county and corporation courts upon the application of either party; and said witnesses shall be entitled to the same allowance and privileges, and be subject to the same penalties as witnesses summoned to attend the said courts. ^{Id. § 45.}

Time for presenting petition to the house.

§ 8. The petition or complaint of the contesting party shall be presented to the proper house within ten days after its meeting, if the disputed election was held at the regular annual period; or if it was a special election to supply a vacancy, within thirty days after the conclusion of the election. ^{1 R. C. p. 159, ch. 51, § 18. 1830-31, p. 24, § 20.}

As to investigation before the house.

§ 9. If it shall be ascertained by the house, after investigation, that an equal number of legal votes was given for the petitioner and for the member returned, the election shall be null and void, and a writ of election ordered as in other cases of vacancy.

Title 4.

CHAPTER XI.

APPOINTMENTS OR NOMINATIONS BY THE COURTS.

Votes to be viva voce and recorded.

§ 1. In every appointment by a court, and in every recommendation or nomination to the executive by a court, to fill any office or post, the votes shall be given *viva voce* in open court, and the vote of each judge or justice voting therein, shall be polled and recorded in the order or minute book. And in each case of nomination or recommendation, a copy of the final voting as polled, and the proceedings of the court thereupon, shall be transmitted to the executive.* ^{1830-31, p. 78, ch. 19.}

* In revising the acts in 1 R. C. p. 275, § 9, *Id.* p. 337, § 68, and 1840-1, p. 6, ch. 2, § 3, the revisors reported a second section to this chapter in these terms:

Title 5.

CHAPTER XII.

OF THE DISABILITIES TO HOLD OFFICE, AND AGAINST SALES
OF OFFICES.

SEC.

1. Disability of person who has violated law against duelling.
2. } Person holding office under United
3. } States.
4. Person convicted of felony.

SEC.

5. Person who buys or sells an office or deputation thereof.
6. Sheriffalty excepted.
7. As to acts by person improperly in office, and contracts in violation of this chapter.

Persons disabled who have violated law against duelling.

1809-10, p. 10, ch.
10, § 2.
1 R. C. p. 583, § 2.
1830-31, p. 103,
ch. 37, § 2.
1847-8, p. 98, § 31.

§ 1. No person shall be capable of holding or being elected to any post of profit, trust or emolument, civil or military, legislative, executive or judicial, under the government of this commonwealth, who, since the fourteenth day of March eighteen hundred and forty-eight, shall have fought, sent or accepted a challenge to fight, in a duel the probable issue of which might have been the death of either party; or shall have been knowingly the bearer of such challenge or acceptance; or been a second to either party; or shall have aided or assisted in such duel in any manner whatever: or who shall hereafter fight, or send or accept a challenge to fight, in a duel, the probable issue of which may be the death of either party; or be knowingly the bearer of such challenge or acceptance; or be a second to either party; or aid in such duel in any manner whatever.

A person holding office under the United States.

12 Hen. Stat. p.
694, ch. 38.
1 R. C. p. 71, ch.
27.

§ 2. No person shall be capable of holding any such post, who holds any post of profit, trust or emolument, civil or military, legislative, executive or judicial, under the government of the *United States*, or who receives in any way from the *United States* any emolument whatever.

Id.

§ 3. The preceding section shall not be construed to prevent members of congress from acting as justices, visitors of the university and *Virginia* military institute, or from holding offices in the militia, or to exclude from office under this state, on account of a pension from the *United States*, a person to whom such pension has been granted in consequence of a wound received in war, or to exclude from such office

“If the justices of any county or corporation court shall be equally divided in any such election or appointment, the sheriff of the county or sergeant of the corporation may vote in favor of one of the two persons between whom the justices shall be equally divided, and such vote shall decide the matter.” In the house of delegates this section was struck out.

militia officers or soldiers on account of the recompense they may receive from the *United States* when called out into actual duty.

Person convicted of felony forfeits his office.

§ 4. A person holding any such post as is mentioned in the first section, who may be sentenced for felony by any court of this state or of the *United States*, shall, by such sentence, forfeit his post, and be thenceforth incapable of acting therein under his previous election or appointment. And though a pardon be afterwards granted him, such pardon shall not avoid the forfeiture. 2 Leigh 724.

One who buys or sells an office, or the deputation thereof, forfeits same.

§ 5. If any such post, or the deputation thereof, either in whole or in part, shall be sold or let to farm, or contracted to be sold or let to farm, by any person holding or expecting to hold the same, such person, and the person who may buy or take to farm, or contract to buy or take to farm the same, shall, each of them, be forever disabled from holding such post or deputation. 1 R. C. p. 559, ch 145.

The sheriffalty excepted.

§ 6. The preceding section shall not be so construed as to prohibit a sheriff, or one who expects to be appointed a sheriff, from selling or letting to farm, or contracting to sell or let to farm the deputation of the office of sheriff, either in whole or in part; subject always to the power of the sheriffs for good cause, to refuse to appoint to, or remove from, the office of deputy sheriff the person with whom such contract may be made, or any other; and subject also to the control of the county court over every person appointed or sought to be appointed deputy sheriff, to such extent and in such manner as may be prescribed by law. Id.
1 Leigh, 42.
10 Leigh 622.
Jefferson's Rep. 59.

Acts by person improperly in office, and contracts in violation of this chapter.

§ 7. All judgments given, and all acts executed or done, by any person by authority or colour of any office or post, or the deputation thereof, before his removal therefrom, shall be as valid as they would be if this chapter had not been enacted; but every contract or security made or obtained in violation of this chapter shall be void. 1 R. C. p. 560, ch 145, § 5.

Title 6.

CHAPTER XIII.

OATHS AND AFFIRMATIONS; AND BONDS TAKEN BY COURTS
AND OFFICERS.

SEC.	SEC.
1. } What oaths officers generally take.	6. Where the fact of the oaths having been taken is recorded.
2. }	7. When a solemn affirmation may be taken instead of an oath.
3. }	8. As to bonds taken by courts and officers.
4. In certain cases, oath of office merely is sufficient.	9. Penalty for acting without taking oath and giving bond.
5. By whom the oaths are administered.	

What oaths officers generally take.

Ord. of Conven-
tion 1776, ch. 3.
9 Hen. Stat. p.
119, ch. 3.
10 Hen. Stat. p.
22, ch. 5.
1 R. C. p. 72, ch.
28, § 1.

§ 1. The oath of fidelity to the commonwealth shall be in the following terms :

I declare myself a citizen of the commonwealth of Virginia, and solemnly swear that I will be faithful and true to the said commonwealth, and will support the constitution thereof, so long as I continue to be a citizen of the same. So help me God.

Id.

§ 2. Every person elected or appointed to any post of profit, trust or emolument, legislative, executive or judicial, civil or military, under the government of this commonwealth, shall before he acts in such post take the said oath, and also the following :

1809-10, p. 10, ch.
10, § 3.
1 R. C. p. 583, § 3.
1830-31, p. 103,
ch. 37, § 2.
1847-8, p. 98, ch.
3, § 31, 2.

I swear that I have not, since the fourteenth of March eighteen hundred and forty-eight, fought in a duel, or sent or accepted a challenge to fight in a duel, the probable issue of which might have been the death of the challenger or challenged, nor been knowingly the bearer of such challenge or acceptance, nor been a second to either party, nor in any manner aided or assisted in such duel, and that I will not be engaged or concerned directly or indirectly in or about any such duel, during my continuance in office. So help me God.

10 Hen. Stat. p.
22, ch. 5.
1 R. C. p. 72, ch.
28, § 2.

§ 3. He shall also at the same time take an oath of office, which, in every case wherein no other is specially prescribed, shall be as follows :

I swear that I will faithfully perform the duty of my office of to the best of my skill and judgment. So help me God.

In certain cases, oath of office merely is sufficient.

1843-4, p. 52, ch.
67, § 4.

§ 4. Where a person residing in another state is appointed a commissioner by the governor, and in such other cases as the law may specially direct, the person elected or appointed shall not be required to take the oaths prescribed by the first or second section. But such person shall not be exempt from taking the oath prescribed by the third section.

By whom the oaths are administered.

§ 5. The oaths to be taken by a person elected a member of either house of the general assembly shall be administered by a member of the council of state. Those to be taken by any person elected an officer of either house, shall be administered in such manner as the house may prescribe by its rules. And the oaths to be taken by a person elected or appointed to any other office or post shall, except in cases in which it may be otherwise directed by law, be administered in a court of record, or by some judge or justice of such a court. A justice of another state may administer the oaths to be taken by a commissioner or other person residing therein.

Ord. of Convention 1776, ch. 3.
10 Hen. Stat. p. 22, ch. 5.
1 R. C. p. 73, ch. 28, § 4.
4 Grat. 281.

Where the fact of the oaths having been taken, is recorded.

§ 6. When a person elected or appointed to any office or post, takes the oaths required of him in a court of record, a transcript from the record of the court, stating the fact of their having been taken, and when he takes such oaths before a member of the council of state, judge or justice, a certificate of the person administering the same, stating the fact of their having been taken, shall be obtained by the person taking the same, and be by him delivered for record, as follows, that is to say: When the oaths are taken by the governor, a member of the council of state, the attorney general, either of the officers mentioned in the first, ninth, tenth, or eleventh sections of the eighteenth chapter, or a commissioner appointed by the governor, the record shall be on the journal of the executive. When taken by the clerk of the council or the doorkeeper thereof, it shall be on the journal of the council. When taken by any of the clerks mentioned in the second, third, fourth and fifth sections of the fourteenth chapter, it shall be in the office of that officer by whom the clerk may have been appointed. When taken by a judge, the record shall be in the first court in which he sits. When taken by a justice out of court, or in any other court than that in which he is to sit, it shall be in the court wherein he is to sit on or before the day that he first sits therein. When taken by any other officer appointed or recommended by or belonging to a court, it shall be in such court. In the case of a member or officer of either house of the assembly, the record shall be on the journal of the house, or in such other manner as the house may prescribe by its rules. And in the case of any officer not otherwise provided for, the record shall be in the court of the county or corporation in which his duties are to be discharged; or if his duties are not to be discharged wholly in one county or corporation, then in the court of the county or corporation in which such officer resides.

10 Hen. Stat. p. 22, ch. 5.
1843-4, p. 52, ch. 67, § 4.

When a solemn affirmation may be taken instead of an oath.

10 Hen. Stat. p. 28, ch. 7.
1806-7, p. 8, ch. 9.
1 R. C. p. 73, ch. 28, § 5.

§ 7. If any person required to take an oath shall declare that he has religious scruples as to the propriety of taking it, he may make a solemn affirmation, which shall, in all respects, have the same effect as an oath.

As to bonds taken by courts and officers.

1842-3, p. 22, ch. 18.

§ 8. Every bond required by law to be taken or approved by, or given before, any court, board or officer, unless otherwise provided for, shall be made payable to the commonwealth of *Virginia*, with surety deemed sufficient by such court, board or officer. Every such bond required of any person appointed to or undertaking any office, post or trust, unless otherwise provided for, shall be with condition for the faithful discharge by him of the duties of his office or trust; and when required to be taken or approved by or before the governor, or a court, shall be proved or acknowledged before the governor or court, and recorded by the secretary of the commonwealth in the former case, or by the clerk of the court in the latter.

1 R. C. p. 279, § 13.
1840-41, p. 7, § 8.

§ 9. Suits may be prosecuted from time to time upon any bond mentioned in the preceding section, in the name of the commonwealth, for the benefit of the commonwealth, a county, or any person injured by any breach of the condition of such bond, as often as any such breach may be alleged, until damages shall be recovered for such breaches equal to the penalty of the bond.

Penalty for acting without taking oath and giving bond.

1 R. C. p. 279, § 14; p. 287, § 6.
1820-21, p. 29, ch. 29, § 4.
1830-31, p. 132, ch. 63.
1832-3, p. 17, ch. 15, § 2.

§ 10. If any officer or person mentioned in the second or the eighth section shall act in his office, post or trust before taking such oaths, or giving such bonds as are required by law, he shall forfeit not less than one hundred, nor more than one thousand dollars.

Title 7.

SALARIES.

CHAPTER XIV.

SALARIES OF CERTAIN OFFICERS OF GOVERNMENT, COMPENSATION OF THE MEMBERS AND OFFICERS OF THE GENERAL ASSEMBLY, MILEAGE AND OTHER ALLOWANCES.

SEC.		SEC.	
1.	In executive department.	16.	Public printer and the printer of the senate.
2.	In first auditor's office.	17.	} Officers of the penitentiary.
3.	In second auditor's office.	18.	
4.	In treasurer's office.	19.	
5.	In land office.	20.	How the salaries and allowances are paid.
6.	} Judges and reporter.	21.	} At what rate mileage is paid, and how it is computed.
7.		22.	
8.		23.	
9.	} Attorneys for the commonwealth.	24.	
10.			
11.	Clerks of courts.		
12.	} Members and officers of the general assembly.		
13.			
14.			
15.			

§ 1. The several officers hereinafter mentioned shall receive annually, the following sums, that is to say:—

In executive department.

The governor the sum of three thousand three hundred and thirty-three and one-third dollars. The lieutenant-governor, while acting as governor by reason of the death or resignation of the governor, the same sum as the governor, in lieu of his compensation as a member of the council of state. The members of the council of state each, one thousand dollars. The secretary of the commonwealth and librarian, sixteen hundred and twenty dollars. The assistant clerk, one thousand dollars, and the copying clerk, seven hundred dollars. The clerk of the council one thousand dollars, and as superintendent of weights and measures, three hundred dollars. The door-keeper of the council, seven hundred and fifty dollars.

In first auditor's office.

§ 2. The first auditor himself, the sum of two thousand dollars. The clerk of accounts, sixteen hundred dollars. The first clerk, thirteen hundred dollars, and also the sum of three dollars per day while acting as first auditor during the absence or sickness of that officer. The second and third clerks each, seven hundred and fifty dollars. The fourth clerk, six hundred dollars.

In second auditor's office.

§ 3. The second auditor, the sum of two thousand dollars. The first clerk in his office thirteen hundred dollars. The second clerk eight hundred dollars. The third clerk six hundred dollars.

In treasurer's office.

§ 4. The treasurer, the sum of two thousand dollars. The first clerk in his office eleven hundred dollars. The second clerk seven hundred and fifty dollars.

In land office.

§ 5. The register of the land office, the sum of two thousand dollars. The first clerk in his office eleven hundred dollars. The second clerk seven hundred and fifty dollars.

JUDICIAL DEPARTMENT.

Court of appeals.

§ 6. The president of the court of appeals, the sum of two thousand seven hundred and fifty dollars. The other judges of said court, each two thousand five hundred dollars. The reporter of the court of appeals fifteen hundred dollars.

General court.

§ 7. The present judges of the sixth and seventh judicial circuits, eighteen hundred dollars each. Each of the judges of the circuit court of *Henrico*, two thousand dollars. All other judges of the general court, fifteen hundred dollars each; and the judge of the twelfth circuit, five hundred dollars in addition, until the twenty-seventh of March eighteen hundred and fifty three.

1847-8, p. 52, ch.
68, § 10.
1848-9, p. 42, ch.
73.
1848-9, p. 42, ch.
73.

§ 8. The several judges of the court of appeals, of special courts of appeals, and of the general court, shall moreover each be entitled to mileage for travel to and from their several courts in the manner hereinafter specified, and have each ten dollars per day for every day's attendance on the general court, or any such special court.

Attorneys for the commonwealth.

§ 9. The attorney-general shall receive annually the sum of one thousand dollars, and mileage for travel to and from the sessions of the court of appeals at *Lewisburg*.

§ 10. The attorney for the commonwealth of the circuit court of *Henrico* four hundred dollars.

Clerks of Courts.

§ 11. The clerk of the court of appeals at *Richmond*, and the clerk of the said court at *Lewisburg*, one thousand dollars each. The clerk of the general court five hundred dollars. The clerk of the circuit court of law for *Henrico* one hundred dollars.

Pay of members and officers of general assembly.

§ 12. The pay of the members and officers of the general assembly shall be as follows: The speaker of the senate the sum of six dollars per day; the speaker of the house of delegates eight dollars per day; and each of the other members of the general assembly four dollars per day, for attendance on the duties of their respective houses. Any member of either house taken so sick during the session of the general assembly, or on his journey to the place of session, as to be unable to come to or sit in the house, shall receive wages for every day of the session he shall be so disabled, in the same manner as if he had sat in the house.

§ 13. The members of assembly shall be allowed mileage for travel to and from the place of session of the general assembly.

§ 14. The clerk of the senate shall receive fifty dollars each week during the session; and thirty dollars each session for preparing an index to the journal of the senate. The clerk of the house of delegates one hundred and fifty dollars each week during the session; also as keeper of the rolls, two hundred dollars annually; also for preparing an index to the journal of the house of delegates and the documents, one hundred dollars; and for preparing tables of the places of holding separate elections, and of the terms of the courts, as required by the sixteenth chapter, the sum of forty dollars annually.

§ 15. The sergeant at arms of the senate and the sergeant at arms of the house of delegates shall each receive the sum of thirty dollars per week during the session. Each of the said sergeants shall be allowed for taking any person into custody by the order of the house, two dollars; for every day he detains such person in custody, two dollars; and for the travel of himself or a messenger, to take any person into custody by such order, eight cents per mile going and the same returning. The doorkeepers of both houses shall receive the sum of twenty-eight dollars each week during the session. The clerks of the several standing committees of the house of delegates shall be allowed for their services twenty-eight dollars per week until discharged, that is to say: The clerk of the committee of courts of justice; the clerk of the committee of propositions and grievances; the clerk of the committees of privileges and elections, and agriculture

and manufactures; the clerk of the committees of finance and claims; the clerk of the committees of roads and internal navigation, and schools and colleges. The said clerks shall perform the duties of clerks of the committees on banks and trade and mechanic arts, militia, and any similar service that may be required of them, without additional compensation.

Public printer and the printer of the senate.

§ 16. The public printer shall receive the sum of forty-eight hundred dollars; the printer to the senate the sum of eight hundred dollars.

Officers of the penitentiary.

§ 17. The superintendent of the penitentiary shall receive the sum of two thousand dollars; the first assistant keeper, seven hundred dollars; the second, third, fourth, fifth, sixth and seventh assistant keepers, each six hundred dollars. Moreover, each of said assistant keepers shall be allowed one hundred dollars worth of the manufactures of the penitentiary at the prices fixed by the directors, every year the labour and manufactures whereof shall amount to the sum of thirty-two thousand dollars. The surgeon of the penitentiary and public guard shall receive the sum of nine hundred dollars.

§ 18. The general agent and storekeeper shall be allowed a commission of eight per centum on all sales of manufactures, either by him or the superintendent, and on all job-work, including manufactures and jobs done for the commonwealth. He shall receive on sales at auction, ordered by the board of directors, a commission of only two and one half per centum. And on manufactures for clothing the convicts and slaves reprieved for transportation, and jobs and labour for the use of the penitentiary, and the repair and preservation of any of the property belonging to the institution, he shall be allowed no commission.

§ 19. The directors of the penitentiary shall receive the sum of three dollars each for every day's attendance on the board: *Provided*, That no director shall receive more than one hundred and fifty dollars per annum. The clerk of the penitentiary, six hundred dollars.

How the salaries and allowances are paid.

§ 20. All the annual salaries mentioned in the preceding sections shall be paid out of the treasury, quarterly, after being duly audited, except that of the public printer, of which one thousand dollars shall be payable quarterly, and the residue on the order of the governor, when the acts of assembly of each session shall have been printed and delivered. All the other allowances, and the mileage mentioned in the preceding

sections, shall, in general, be payable when the services and travel shall have been performed. But members of the general assembly, and others travelling to the seat of government, who would be entitled to mileage for travelling home, may receive the mileage last mentioned before going home.

Mileage.

§ 21. Mileage (unless otherwise provided) shall be at the rate of four dollars for every twenty miles of necessary travel.

§ 22. The distance between any points shall be computed according to the nearest mail route, except where some specific rule is provided.

§ 23. The following shall be computed as the number of miles between the city of Richmond and the respective court-houses of the following counties: Accomack, two hundred and sixteen; Albemarle, eighty; Alexandria, one hundred and fifteen; Alleghany, two hundred; Amelia, forty-seven; Amherst, one hundred and thirty-six; Augusta, one hundred and twenty-one; Appomattox, one hundred; Bath, one hundred and seventy-five; Barbour, two hundred and seventy-five; Bedford, one hundred and forty-five; Berkeley, one hundred and seventy; Boone, three hundred and forty-nine; Botetourt, one hundred and sixty-seven; Braxton, three hundred and eighteen; Brooke, three hundred and seventy-three; Brunswick, sixty-nine; Buckingham, eighty; Cabell, three hundred and sixty-three; Campbell, one hundred and twenty; Caroline, forty-four; Carroll, two hundred and fifty-five; Charles City, thirty; Charlotte, one hundred; Chesterfield, fourteen; Clarke, one hundred and forty-six; Culpeper, one hundred; Cumberland, fifty-five; Dinwiddie, forty; Doddridge, three hundred and twenty-four; Elizabeth City, ninety-six; Essex, fifty; Fairfax, one hundred and twenty-nine; Fauquier, one hundred and seven; Fayette, two hundred and eighty-five; Fluvanna, fifty-nine; Floyd, two hundred and twenty-five; Franklin, one hundred and eighty-five; Frederick, one hundred and fifty; Giles, two hundred and forty-one; Gilmer, two hundred and ninety-eight; Gloucester, eighty; Greene, ninety; Goochland, twenty-eight; Grayson, two hundred and eighty; Greenbrier, two hundred and twenty-one; Greenville, sixty-three; Halifax, one hundred and thirty; Hampshire, two hundred; Hancock, three hundred and ninety-two; Hanover, twenty; Hardy, two hundred and eighteen; Harrison, two hundred and ninety-five; Henry, two hundred; Highland, one hundred and seventy-two; Jackson, three hundred and sixty-two; Isle of Wight, ninety; James City, sixty; Jefferson, one hundred and sixty; Kanawha, three hundred and twenty-five; King and Queen, forty; King George, eighty-three; King William, twenty-seven; Lancaster, ninety; Lee, four hundred and five; Logan, three hundred and seventy-four; Loudoun, one hundred and fifty; Louisa, fifty-four; Lewis, two hundred and seventy-two; Lunenburg, se-

venty-five; Madison, one hundred; Marion, three hundred and ten; Marshall, three hundred and fifty; Matthews, one hundred; Mercer, two hundred and seventy; Mason, three hundred and eighty; Middlesex, eighty-three; Mecklenburg, one hundred and ten; Monongalia, three hundred; Monroe, two hundred and thirty-five; Montgomery, two hundred and fifteen; Morgan, one hundred and eighty-six; Nansemond, one hundred and two; Nelson, one hundred and ten; New Kent, thirty; Nicholas, two hundred and eighty-five; Norfolk, one hundred and sixteen; Northampton, one hundred and seventy-four; Northumberland, eighty-five; Nottoway, sixty; Ohio, three hundred and fifty-seven; Orange, eighty; Page, one hundred and forty; Patrick, two hundred and thirty-five; Pendleton, one hundred and seventy; Pittsylvania, one hundred and sixty; Pocahontas, two hundred; Powhatan, thirty-two; Preston, two hundred and eighty; Prince Edward, eighty; Princess Anne, one hundred and thirty-seven; Prince George, thirty; Prince William, one hundred and two; Pulaski, two hundred and twenty-nine; Putnam, three hundred and forty-nine; Randolph, two hundred and forty-five; Rappahannock, one hundred and twenty-five; Richmond, sixty; Ritchie, three hundred and forty; Roanoke, one hundred and eighty; Rockbridge, one hundred and fifty-six; Rockingham, one hundred and thirty; Russell, three hundred and thirty-two; Scott, three hundred and seventy; Shenandoah, one hundred and sixty; Smyth, two hundred and eighty-six; Southampton, seventy-five; Spottsylvania, seventy; Stafford, seventy-three; Surry, sixty-seven; Sussex, fifty; Tazewell, three hundred; Taylor, two hundred and ninety; Tyler, three hundred and thirty-seven; Warren, one hundred and forty; Warwick, eighty-one; Washington, three hundred and nine; Westmoreland, seventy; Wetzel, three hundred and forty-seven; Wirt, three hundred and forty; Wood, three hundred and seventy; Wythe, two hundred and fifty-seven; York, seventy-two. And the following shall be computed as the number of miles between the City of Richmond and the respective courthouses of the following corporations: Norfolk, one hundred and sixteen; Petersburg, twenty-two and Williamsburg, sixty.

§ 24. The distance of the City of Richmond from any place in any county or corporation other than the courthouse thereof, shall be ascertained by adding to or deducting from the number of miles between the City of Richmond and such courthouse as declared by this or any future law, so many miles as such place may be farther from or nearer to said city than such courthouse may be.

Title 8.

GENERAL ASSEMBLY.

CHAPTER XV.

DUTIES AND PRIVILEGES OF MEMBERS OF THE GENERAL ASSEMBLY AND THE OFFICERS THEREOF.

SEC.

1. } Time and place of meeting.
2. }
3. Flag suspended while either house is in session.
4. }
- to } Privileges of members.
8. }
9. Rule which governs the assembly as to appropriations of money.

SEC.

10. } When testimony is wanted before
11. } either house or a committee, how
12. } it is obtained.
12. Concerning officers of assembly.
13. }
14. } As to clerk of house of delegates.
15. }
15. As to clerk of senate.
16. As to clerks of both houses.

Time and place of meeting.

§ 1. The general assembly shall meet on the first Monday in December in every year. It shall sit at the capitol in the city of *Richmond*, but may, during a session, or at the end thereof, adjourn to any other place. 1 R. C. p. 156, § 5. 1830-31, p. 18, § 8; p. 30, § 39.

§ 2. If the general assembly cannot safely meet at the place prescribed by law, or to which it had adjourned, because of a public enemy, or any dangerous contagious disease, or for any other cause, it may meet at such other place as the governor shall appoint, of which he shall give notice by proclamation. 1d.

Flag suspended while either house is in session.

§ 3. During the sessions of either house, the flag of the state of *Virginia* shall be kept suspended over the capitol or other place of session. 1845-6, p. 162, No. 7.

Privileges of members.

§ 4. Any action or suit may be commenced and prosecuted against a member of the general assembly, provided his person be not taken into custody or imprisoned. 1 R. C. p. 163, 4, § 31. 1830-31, p. 29, § 34.

§ 5. During his attendance upon the general assembly, and for one day before and after the session for every twenty miles he must necessarily travel to or from his home, a member of the assembly shall be privileged from being taken into custody or imprisoned under any process except as follows: 1d.

§ 6. No member of the assembly shall be privileged from arrest or imprisonment for treason, felony, perjury, breach of

the peace, or for any contempt of court which is of a criminal nature, and not merely a disobedience of civil process.

1 R. C. p. 163, 4, § 31.
1830-31, p. 29, § 34. § 7. Any court or judge awarding a writ of *habeas corpus*, directed to a member of the assembly, shall have power to compel obedience to such writ.

1 R. C. p. 164, § 32, 3, 4.
1830-31, p. 29, 30, § 35, 6, 7. § 8. No person being, or who shall have been, a member of the general assembly, shall be arrested or imprisoned for or on account of any words spoken or written, or for any proceedings had in either house; but nothing herein contained shall in any respect restrict the power which the houses of assembly now have over their respective members.

Rule which governs assembly as to appropriations of money.

13 Hen. Stat. p. 33, ch. 24.
1 R. C. p. 138, ch. 42. § 9. No money shall be appropriated in the general assembly by resolution only; but if money shall be appropriated by law, the application of the same in pursuance of the law may be directed by resolution.

Procuring testimony.

1819-20, p. 38, ch. 55.
1842-3, p. 29, ch. 40, § 1. § 10. When the senate or house of delegates, a joint committee thereof, or any committee of either house authorized to send for persons and papers, shall order the attendance of any witness, or the production of any paper as evidence, a summons shall be issued accordingly by the clerk of such house or committee, directed to the sheriff, sergeant, or other officer of any county or corporation, and when served, obedience thereto may be enforced by attachment, fine and imprisonment, at the discretion of the house which, or the committee of which, caused the summons to issue, or in the case of a joint committee, as the two houses may determine by joint resolution.

1842-3, p. 29, ch. 40, § 2. § 11. The oaths to be taken by any witness examined before such house or committee may be administered by the speaker of the house, chairman of the committee, or the clerk of the house or committee.

Concerning the officers of the general assembly.

§ 12. The several officers of each house shall perform such duties as shall be required of them by their respective houses.

1835-6, p. 9, ch. 7, § 1.
1836-7, p. 40, ch. 64.
1838, p. 69, ch. 88. § 13. In addition to such duties as may be prescribed by the rules of the house, the clerk of the house of delegates shall, at the end of each session of the assembly, prepare an index to the journal of the house and the documents printed during the session by order of the house, and deliver the same to the public printer. The bound copies of the journal and documents aforesaid, when delivered to him by the public printer, shall be distributed by the clerk as follows: one copy to each

member of the general assembly, and such persons as either house may direct, and the rest to the secretary of the commonwealth, of which twelve copies shall be bound and kept in the library, fifty shall be disposed of as the executive may direct, and the rest shall be a part of the library fund. The said clerk shall, at the commencement of each session, make out and report to the legislature, a condensed abstract from the reports made to him by the clerks of courts. See post, ch. 163, § 25.

§ 14. The clerk of the house of delegates shall be keeper of the rolls. As such, he shall cause all the acts and joint resolutions of the assembly to be enrolled on parchment. He shall have the custody of the acts and joint resolutions of the general assembly, and the records and papers of the house of delegates, and when required, shall make a copy of any of them, which copy, being certified by him, shall be evidence for any purpose for which the originals would be received, and with as much effect. He shall, as soon as practicable after the adjournment of the assembly, prepare the acts and joint resolutions of the previous session for publication, with an index and tables as prescribed by the sixteenth chapter, and furnish to the public printer the manuscript of such acts, resolutions, tables and index arranged properly for being printed, and he shall superintend the publication thereof. 1796, p. 39, ch. 76, § 2. 2 R. C. p. 327, § 5. 1845-6, p. 162, No. 8. See post, p. 98, ch. 16, § 4.

§ 15. The clerk of the senate shall, at the end of each session, prepare an index to the journal of the senate and the documents printed by its order, and deliver the same to the printer of the senate, and when printed, the said clerk shall distribute the same as directed, in regard to the journal of the house of delegates, by the thirteenth section. 1841-2, p. 10, ch. 9, § 6.

§ 16. It shall be the duty of the clerks of the senate and house of delegates, respectively, to take charge of, and keep, during the recess of the general assembly, all the books and maps belonging to the several standing committees of their respective houses, and to deliver the same at the commencement of each session to the clerks or chairmen of said committees, who shall return them to the clerks of the two houses at the end of the session. 1827-8, p. 13, ch. 15, § 2.

Title 9.

OF STATUTES GENERALLY, AND RULES OF DECISION.

CHAPTER XVI.

FORCE OF THE COMMON LAW AND THE STATUTES BEFORE THE REVOLUTION; ALSO THE MANNER OF PROMULGATING STATUTES, AND THE RULES WHICH GOVERN THEIR CONSTRUCTION.

SEC.		SEC.	
1. }	The common law and ancient sta-	16.	Printed copies of statutes to be re-
2. }	tutes.		ceived as evidence.
3 }	Of new statutes. When they com-	17. }	Rules for the construction of sta-
to }	mence; how preserved, printed	18. }	tutes.
15. }	and distributed.	19. }	

The common law and ancient statutes.

Ord. of Conven-
tion, May 1776, p.
21.

9 Hen. Stat. p.
127, § 6.

13 Hen. Stat. p.
23, ch. 17.

1 R. C. p. 135, 6,
ch. 38, 40.

Id.
3 Rand. 291.

§ 1. The common law of *England*, so far as it is not repugnant to the principles of the bill of rights and constitution of this state, shall continue in full force within the same, and be the rule of decision, except in those respects wherein it is or shall be altered by the general assembly.

§ 2. The right and benefit of all writs, remedial and judicial, given by any statute or act of parliament, made in aid of the common law prior to the fourth year of the reign of *James* the First, of a general nature, not local to *England*, shall still be saved, so far as the same may consist with the bill of rights and constitution of this state and the acts of assembly.

Of new statutes. When they commence; how preserved, printed and distributed.

12 Hen. Stat. p.
128, 9, ch. 55, §

11.

13 Id. p. 9, ch. 9,

§ 2.

1818-19, p. 14.

1 R. C. p. 138, ch.

41.

§ 3. Every act of assembly shall commence and be in force upon and after the first day of May next succeeding the passage thereof, unless another day for the commencement thereof be particularly mentioned in the act itself, or be otherwise expressly provided; and the day of passing every act (which may be passed after this act takes effect,) shall be noted in the publication next after the title thereof.

1811-12, p. 32, ch.

21, § 4.

9 R. C. p. 327, § 5.

§ 4. The acts and resolutions of each session of the general assembly shall be printed in pamphlet form, in two parts; the first containing general acts, the second local or private acts. With the said acts and resolutions shall be tables showing the times for the commencement of the regular terms of each circuit, county and corporation court in the state, and the places at which separate polls have been established in each county. And there shall be to the whole a well arranged index.

§ 5. All the copies of the same which may be printed for the commonwealth shall be delivered to the secretary thereof; and the said copies shall be distributed as follows:

§ 6. One copy to every judge, justice and clerk of any court of this state; to every attorney for the commonwealth, and to every sheriff and sergeant of a county or corporation therein. 1 R. C. p. 144, ch. 46, § 8.

§ 7. One copy to every judge and clerk of any court held in this state under the laws of the *United States*; and to each attorney and marshal in this state, holding office under the *United States*. 1839, p. 206, No. 5.

§ 8. One copy to each of the following public officers, namely: the governor, members of the council of state, the attorney-general, members of the general assembly, secretary of the commonwealth, the auditors, the treasurer, register of the land office, and the superintendent of the penitentiary. 1836-7, p. 23, ch. 28, § 2.

§ 9. Two copies for the general library, and two copies to each of the law libraries.

§ 10. One copy to the university, one to each college within the state, one to the court of directors of each of the lunatic asylums, one to the deaf and dumb and blind institution, and one to the *Virginia* military institute. 1831-2, p. 13, ch. 11, § 2.

§ 11. Five copies to the clerk of the senate for the use of the senate, and ten copies to the clerk of the house of delegates for the use of the house.

§ 12. One copy to the governor of each of the other states, and of each of the territories, for the use of the respective states and territories.

§ 13. Three copies to the librarian of congress, whereof one copy shall be for the library, and one for each of the two houses of congress. 1819-20, p. 16, ch. 18.

§ 14. Three copies to the secretary of state of the *United States*, whereof one shall be for his office, one for the president, and one for the attorney-general of the *United States*.

§ 15. All of the said copies shall be half bound.

1836-7, p. 23, ch. 28.

Printed copies of statutes to be received as evidence.

§ 16. The thirteen volumes of the statutes of *Virginia* from sixteen hundred and nineteen to seventeen hundred and ninety-two, heretofore published by *William Waller Hening*, and to which reference is made in certain acts of the general assembly, passed on the fifth of February eighteen hundred and eight, twelfth of February eighteen hundred and thirteen, and tenth of March eighteen hundred and nineteen; the several editions of the code of laws and of supplements to, or continuations of, the code authorized by or referred to in the acts of assembly, passed the twenty-eighth of December seventeen hundred and ninety-two, twenty-sixth of January eighteen hundred and two, seventh of January eighteen hundred and seven, tenth of February eighteen hundred and twelve, twelfth of March eighteen hundred and nineteen, and twenty-first of February eighteen hundred and thirty-five; 13 Hen. Stat. p. 531. 1801-2, p. 14, ch. 15. 1806-7, p. 9, ch. 14. 1807-8, p. 24, ch. 17. 1811-12, p. 31, ch. 21. 1812-13, p. 40 ch. 29. 1818-19, p. 15, ch. 18. Id. p. 50, ch. 35. 2 R. C. p. 328, to 332. App. 1, ch. 2 to 7. 1834-5, p. 16, ch. 15.

the printed copies of the acts and resolutions of the general assembly since seventeen hundred and ninety-two, heretofore published, or which may hereafter be published for the commonwealth; and any other copies of the said acts and resolutions since seventeen hundred and ninety-two, which have been or may be published by the public printer for the time being, shall be received as evidence in the courts of this state, for any purpose for which the original acts or resolutions could be received, and with as much effect.

Construction of statutes.

§ 17. In the construction of all statutes the following rules shall be observed, unless such construction would be inconsistent with the manifest intent of the legislature:

First. The word, "state," when applied to a part of the *United States*, shall be construed to extend to and include the district of *Columbia*, and the several territories so called, and the words "*United States*," shall be construed to include the said district and territories.

Second. The words "the governor" shall be equivalent to "the executive power of this commonwealth," or to "the person having the executive power." The word "justice," or "justices," shall be construed as if the words "of the peace" followed them.

Third. Words purporting to give authority to three or more public officers or other persons shall be construed as giving such authority to a majority of such officers or other persons, unless it shall be otherwise expressly declared in the law giving the authority.

Fourth. The words "personal representative" shall be construed to include the executor of a will or the administrator of the estate of a decedent, the administrator of such estate with the will annexed, the administrator of such estate, unadministered by a former representative, whether there be a will or not, a sheriff, sergeant, or other officer who is under the order of a court of probate, to take into his possession the estate of a decedent and administer the same, and every other curator or committee of a decedent's estate, for or against whom suits may be brought for causes of action which accrued to or against the decedent.

Fifth. The words "insane person" shall be construed to include every one who is an idiot, lunatic, *non compos*, or deranged.

Sixth. The word "oath" shall be construed to include an affirmation in all cases in which by law an affirmation may be substituted for an oath, and in the like cases, the word "sworn" shall be construed to include the word "affirm."

Seventh. Unless otherwise expressed, the word "month" shall be construed to mean a calendar month, and the word "year" a calendar year; and the word "year" alone shall be equivalent to the expression "year of our Lord."

Eighth. Where a statute requires a notice to be given, or any other act to be done a certain time before any motion or proceeding, there must be that time exclusive of the day for such motion or proceeding, but the day on which such notice is given or such act is done, may be counted as part of the time.

Ninth. Where a court is directed to be held, or any other proceeding directed by law to take place, on a particular day of a month, if that day happen to be Sunday, the court shall be held or the proceeding take place on the next day. And where a law authorizes a court, or the proceedings of an officer, to be adjourned from day to day, an adjournment from Saturday to Monday shall be legal.

Tenth. The word "land" or "lands," and the words "real estate" shall be construed to include lands, tenements and hereditaments, and all rights thereto and interests therein, other than a chattel interest, and the words "personal estate" shall include chattels real and such other estate as upon the death of the owner intestate would devolve upon his personal representative.

Eleventh. The words "written" and "in writing" shall be construed to include any representation of words, letters or figures, whether by printing or otherwise.

Twelfth. In cases in which the seal of any court or public office shall be required to be affixed to any paper issuing from such court or office, the word "seal" shall be construed to include an impression of such official seal made upon the paper alone, as well as an impression made by means of a wafer, or of wax affixed thereto. And in any case in which the seal of any natural person shall be required to a paper, it shall be sufficient for such person to affix to such paper a scroll by way of seal.

Thirteenth. A word importing the singular number only, may extend and be applied to several persons or things, as well as to one person or thing; and a word importing the plural number only, may extend and be applied to one person or thing, as well as to several persons or things; and a word importing the masculine gender only, may extend and be applied to females as well as males; and the word "person" may extend and be applied to bodies politic and corporate as well as individuals.

Fourteenth. The words "preceding" and "following," when used by way of reference to any section or sections of any statute, shall be construed to mean next preceding or next following that in which such reference is made.

§ 18. No new law shall be construed to repeal a former law, as to any offence committed against the former law, nor as to any act done, any penalty, forfeiture or punishment incurred, or any right accrued, or claim arising under the former law, or in any way whatever to affect any such offence or act so committed or done, or any penalty, forfeiture or punishment so incurred, or any right accrued, or claim arising before

the new law takes effect; save only that the proceedings thereafter had shall conform, so far as practicable, to the laws in force at the time of such proceedings; and if any penalty, forfeiture or punishment be mitigated by any provision of the new law, such provision may, with the consent of the party affected, be applied to any judgment pronounced after the new law takes effect.

13 Hen. Stat. p.
9, ch. 9, § 2, 3.
1818-19, p. 14.
1 R. C. p. 138, ch.
41, § 2, 3.

§ 19. When a law, which may have repealed another, shall itself be repealed, the previous law shall not be revived without express words to that effect, unless the law repealing it be passed during the same session.

Title 10.

CERTAIN STATE OFFICERS AND BUILDINGS; AND THE STATE LIBRARIES.

CHAP. 17. The day that the term of members of the council commences; also concerning the governor's powers and duties.

18. Of certain offices at the seat of government; the mode of appointment thereto, bonds of the officers, term and tenure of office.

19. Of the duties of the secretary of the commonwealth; and concerning the state libraries.

20. Duties of the public printer and of the printer to the senate.

21. Office of the superintendent of public buildings, and of the doorkeeper of the council.

CHAPTER XVII.

THE DAY THAT THE TERM OF MEMBERS OF THE COUNCIL COMMENCES; ALSO CONCERNING THE GOVERNOR'S POWERS AND DUTIES.

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1. Day for commencement of term of council.

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3. } Power of governor to call out mi-
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7. } persons in time of war.

8. } Surrender of fugitives from fo-
9. } reign nations.

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13. } states.
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SEC.

16. When fugitives are to be detained here.

17. Rewards for persons charged with offences.

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21. }

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23. } Credentials to senators in con-
24. } gress.

25. } Distribution of laws and other do-
26. } cuments.
27. }

28. Civil contingent fund.

Day for term of council to commence.

§ 1. The term of each member of the council of state shall commence as heretofore on the thirty-first day of March next succeeding the election of such councillor.

Power of governor to call out the militia.

§ 2. If any combination, whether for dismembering the state or establishing in any part of it a separate government, or for any other purpose, shall become so powerful as to obstruct in any part of this state the due execution of the laws thereof, in the ordinary course of proceeding, the governor may call forth the militia, or any part thereof, to suppress such combination.

12 Hen. Stat. p. 42, ch. 10, § 4.
1 R. C. p. 142, ch. 46, § 1.

§ 3. Whenever the governor shall call forth the militia, whether by virtue of the constitution or of the preceding section, he shall issue such orders and take such measures for procuring and transporting the detachments as to him shall seem best, and for their accommodation, equipment and support, shall appoint such quartermasters, commissaries, and other staff, as to him shall seem proper.

1 R. C. p. 120, ch. 35, § 85, 86.
1833-4, p. 51, ch. 22, § 118, 19, 20.

§ 4. Such orders shall be sent to such officers and in such manner as the governor may deem expedient, with a notification of the place of rendezvous. And the officers to whom the orders are sent shall proceed immediately to execute the same.

§ 5. If such officers as the governor deems necessary do not attend at the place of rendezvous, or if the governor shall be satisfied that they will not attend, he may appoint from the counties from which the detachments are called forth, so many officers as may seem to him proper for the said detachments.

Apprehending suspicious persons in time of war.

§ 6. The governor may cause to be apprehended and secured, or may compel to depart from this state, all suspicious subjects or citizens of any foreign state or power at war with the *United States*, or from which hostile designs against the *United States* are apprehended by the president thereof. And the governor may send for the person and papers of any foreigner within this state in order to obtain information to enable him to act in such cases.

12 Hen. Stat. p. 47, ch. 15.
1 R. C. p. 142, ch. 46, § 2, 3.

§ 7. Any warrant or order of the governor under the preceding section may be directed to any sheriff or other officer, and shall be executed according to the terms thereof by such officer, who shall have all the powers necessary for the purpose, either in or out of his county or corporation.

Fugitives from foreign nations.

§ 8. The governor shall, whenever required by the executive authority of the *United States*, pursuant to the constitution and laws thereof, deliver over to justice any person found within the state, who shall be charged with having committed any crime without the jurisdiction of the *United States*.

1 R. C. p. 591, 2, § 4.

§ 9. The governor, though not so required, may, in his discretion, deliver over to justice any person found within the

state, who shall be charged with having committed, without the jurisdiction of the *United States*, any crime, except treason, which by the laws of this state, if committed therein, is punishable by death or imprisonment in the penitentiary; such delivery shall only be made on the requisition of the duly authorized officers or agents of the government, within the jurisdiction of which the crime shall be charged to have been committed; and the governor shall require such evidence of the guilt of the person so charged, as would be necessary to justify his apprehension and commitment for trial, had the crime charged been committed within this state. The expense of apprehension and delivery shall be defrayed by those to whom the delivery is made.

Fugitives from other states.

1 R. C. p. 592, § 5. § 10. Any person charged in another state of this Union with treason, felony or other crime, who shall flee from justice and be found in this state, shall, on demand of the executive authority of the state from which he fled, made in the manner prescribed by the constitution and laws of the *United States*, be delivered up according to the said constitution and laws, to be removed to the state having jurisdiction of the crime.

1 R. C. p. 592, § 6.
1839-40, p. 51, ch.
60. § 11. Whenever any person shall be found within this state, charged with treason, felony, or other crime, committed in any other state, any justice may, upon complaint, on oath, or other satisfactory evidence, that such person committed the offence, issue a warrant to bring the person so charged before the same or some other justice within the state; and the officer to whom such warrant may be directed, may execute the same in any county or corporation in the state, and bring the party, when arrested, before any justice of the same or any other county or corporation.

Id. § 12. If it shall appear to the justice, before whom the person charged may be brought, that there is reasonable cause to believe that the complaint is true, he shall, if he would have been bailable by a justice, in case the offence had been committed in this state, be required to recognise, with sufficient sureties, in a reasonable sum, to appear before the court of the county or corporation at a future day, allowing a reasonable time to obtain the warrant of the executive, and to abide the order of the court; and if such person shall not so recognize, he shall be committed to prison, and be there detained until such day. The recognizance, if any, shall be returned to the said court without delay; and if the person so recognizing shall fail to appear according to the condition of his recognizance, he shall be defaulted, and the like proceedings shall be had as in the case of other recognizances entered into before a justice; but if such person would not have been bailable by a justice, in case the offence had been committed in this state, he shall be committed to prison, and there detained until the day so appointed for his appearance before the court.

§ 13. The justice by whom such person may be so recognized or committed, shall immediately, by letter, apprise the governor of the fact, who shall, thereupon, communicate the same to the executive of the state where the crime is charged to have been committed. 1 R. C. p. 592, § 6. 1839-40, p. 51, ch. 60.

§ 14. If the person so recognized or committed shall appear before the court upon the day ordered, he shall be discharged, unless he shall be demanded by some person authorized by the warrant of the governor to receive him, or unless the court shall see cause to commit him, or to require him to recognize anew, for his appearance at some other day; and if, when ordered, he shall not so recognize, he shall be committed and detained as before. But whether the person so charged shall be recognized, committed or discharged, any person authorized by the warrant of the governor may, at all times, take him into custody, and the same shall be a discharge of the recognizance, if any, and shall not be deemed an escape.

§ 15. The complainant in such case shall be answerable 1a. for all the actual costs and charges, and for the support, in prison, of any person so committed, to be paid in the same manner as by a creditor for his debtor, committed on execution; and if the charge for his support in prison shall not be so paid, the jailor may discharge such person in like manner as if he had been committed for debt on an execution.

When fugitives are to be detained here.

§ 16. No person under prosecution for any offence, alleged to be committed within this state, shall be delivered up to the executive authority of another state, or of the *United States*, until such prosecution shall have been determined and the person prosecuted shall have been punished, if condemned: nor shall any person, under recognizance to appear as a witness in any such prosecution, be so delivered up, until said prosecution shall be determined. Nor shall any person who was in custody upon any execution, or upon process in any suit, at the time of being apprehended for a crime charged to have been committed without the jurisdiction of this state, be so delivered up, without the consent of the plaintiff in such execution or suit, until the amount of such execution shall have been paid, or until such person shall be otherwise discharged from such execution or process. 1 R. C. p. 593, § 7.

Rewards for persons charged with offences.

§ 17. The governor may offer a reward for apprehending and securing any person convicted of an offence or charged therewith, who shall have escaped from prison, or for apprehending and securing any person charged with an offence, who, there is reason to fear, cannot be arrested in the common course of proceeding. But no such reward shall be paid to

any sheriff, sergeant or other officer, who may arrest such person by virtue of any process in his hands to be executed.

Power to reprieve or pardon.

9 Hen. Stat. p.
168, ch. 3, § 3.
1 R. C. p. 594, § 9.

§ 18. The governor shall not grant a pardon in any case before conviction, nor* to any person convicted of treason against the commonwealth, except with the consent of the general assembly, declared by joint resolution. Neither shall he grant a reprieve to any person convicted of treason, for a longer period than until the end of the session of the general assembly, during which it may be granted, or than until the end of the succeeding session, when it is granted during the recess.

1800-01, p. 24, ch.
43.
1 R. C. p. 430,
§ 39.

§ 19. In the case of a slave under sentence of death, the governor may order a commutation of the punishment by directing that such slave be sold, to be transported beyond the limits of the *United States*. The governor shall cause him to be sold, and the purchaser, before delivery to him of the slave, shall pay into the treasury the price agreed, and enter into bond, approved by the governor, in the penalty of one thousand dollars, conditioned that the slave shall within three months be transported beyond the limits of the *United States*, and shall never afterwards return into this state.

1800-01, p. 34, ch.
59.
1 R. C. p. 144, ch.
46, § 8; ch. 47, § 1.

§ 20. The governor shall not remit, in whole or in part, any fine or amercement assessed or imposed by any court of record, court martial or other authority having jurisdiction to assess or impose the same, except as follows:

1825-6, p. 20, ch.
18, § 2, 3.

§ 21. Whenever judgment shall have been rendered against any person for a contempt of court, other than for non-performance of or disobedience to some order, decree or judgment, the governor shall have power to pardon the offence and remit the punishment, whether corporal or pecuniary, either in whole or in part.

* The words "in any case before conviction nor" were inserted in this section by the committee on revision.

In October 1785, an act was passed, to continue until the last day of December 1786, authorizing the governor, with the advice of the council of state, to pardon or reprieve any person sentenced to death for a felonious offence, "upon such conditions of bodily labour to be performed by each person so pardoned or reprieved as to the governor, with the advice of council, shall seem proper:" *provided* that no conditional pardon should be granted by the governor for murder or treason. 12 Hen. Stat. p. 45, ch. 13. At the late revisal, a section recommended by the revisors was reported by the committee on revision in the following terms: "In any case, wherein the governor has power to grant a pardon, instead of granting the same unconditionally, he may, after sentence, upon the petition of the person sentenced, grant him a pardon, upon such conditions as may be deemed proper by the governor and be assented to by the petitioner; and for the purpose of carrying into effect such conditional pardon, he may issue his order or warrant, directed to any proper officer, which shall be obeyed and executed instead of the sentence that was originally awarded. Especially it shall be the duty of the superintendent of the penitentiary to receive and confine therein, according to such order or warrant, any person convicted of any crime punishable with death, who shall be pardoned on condition of being confined in the penitentiary." This section was *not* passed by the legislature.

§ 22. Any officer to whom any order or warrant of the governor may be directed shall make return thereof to the secretary of the commonwealth, who shall preserve the same in his office.

Credentials to senators in congress.

§ 23. So soon as any senator shall be chosen by the legis-^{12 Hen. Stat. p. 714, ch. 55.} lature to represent this state in the senate of the *United States*,^{1 R. C. p. 149, ch. 49.} the clerk of the house of delegates shall give information of the same to the governor, who shall cause a credential to be made out in the words following :

Virginia, to wit:

The legislature of this state, having on the _____ day of _____, in pursuance of the constitution for the United States, chosen _____, esquire, a senator from this state for six years from the _____ day of _____ (or to fill the vacancy which has happened by the resignation, death or otherwise, of A. B., esquire,) I _____, being governor of the commonwealth, do hereby certify the same to the senate of the United States. Given under my hand and the seal of the commonwealth, this _____ day of _____.

The seal of the commonwealth shall accordingly be fixed to such credential, and the governor shall sign the credential, and cause it to be delivered to the senator so chosen.

§ 24. When a vacancy shall happen during the recess of the legislature, and the executive shall make a temporary appointment of a senator, a credential with the seal of the commonwealth affixed thereto, and signed by the governor, shall be delivered to the person so appointed, in the words following, to wit :

Virginia, to wit :

A. B., esquire, who was on the day of ,
in pursuance of the constitution of the United States, duly chosen
a senator from this state for six years from the day of ,
having died (resigned or otherwise, as the case may
be,) during the recess of the legislature, I , being governor
of the commonwealth, do by virtue of the said constitution appoint
 esquire to be and act as a senator from this state until
the next meeting of the legislature. Given under my hand and the
seal of the commonwealth this day of .

Distribution of laws and other documents.

§ 25. The governor shall cause such distribution to be made of the acts and resolutions of the general assembly as is directed by the 16th chapter. They shall be sent by mail, express or otherwise, as he may deem best. It shall be sufficient to send to the clerk of each county or corporation court all the copies for persons within such county or corporation, with a list of the persons for whom they are intended. And the clerk shall distribute the same.

1840-41, p. 152,
No. 3.

§ 26. Of the bound copies of the journal and documents of the senate and house of delegates each session, the governor shall transmit one to the governor of each of the other states, and of each of the territories of the *United States*, one to the secretary of state of the *United States*, and three to the librarian of congress, whereof one shall be for the library and one for each of the two houses of congress.

1 R. C. p. 129,
§ 24.
1833-4, p. 59, ch.
22, § 165.

§ 27. The governor shall cause to be printed and distributed so many copies of the twenty-second, twenty-third, twenty-fourth, twenty-fifth, twenty-sixth, twenty-seventh, twenty-eighth, twenty-ninth, thirtieth and thirty-first chapters, and so many copies of the articles of war, (as revised by the congress of the *United States*,) as will be sufficient to furnish each commissioned officer of the militia of this state with one copy.

Civil contingent fund.

§ 28. Out of the sum annually appropriated as a civil contingent fund, there may be paid all expenses in the execution of any law for which there is no special appropriation, and any other sums which the governor may deem necessary or proper. No payment shall be made out of the said contingent fund, except upon the order of the governor directed to the first auditor.

CHAPTER XVIII.

OF CERTAIN OFFICES AT THE SEAT OF GOVERNMENT; THE
MODE OF APPOINTMENT THERETO, BONDS OF THE OFFICERS,
TERM AND TENURE OF OFFICE.

Appointments by assembly.

- | | |
|------|---|
| SEC. | |
| 1. | Secretary of the commonwealth, auditors, treasurer, register, superintendent of penitentiary, general agent and store-keeper, and public printer. |
| 2. | Their term of office. |
| 3. | } As to their bonds. |
| 4. | |
| 5. | |
| 6. | In case bond be not given or official oaths taken. |
| 7. | Power of removal. |
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Appointments by executive officers.

- | | |
|------|--|
| SEC. | |
| 9. | Directors of penitentiary, surgeon. |
| 10. | Clerk of penitentiary, and assistant keepers. |
| 11. | Secretary's clerks. |
| 12. | Council's clerk and doorkeeper. |
| 13. | Clerks in offices of auditors, treasurer and register. |
| 14. | Power of removal. |

Appointments by the general assembly.

1 R. C. p. 322, ch.
86, § 2.
2 R. C. p. 1, § 1;
p. 326, § 1.

§ 1. There shall be elected annually, by joint vote of both houses of the general assembly, the following officers: A secretary of the commonwealth, (who shall also be the general

librarian,) a first and second auditor, a treasurer, a register of the land office, a superintendent of the penitentiary, a general agent and storekeeper of the penitentiary, and a public printer.

§ 2. The term of office of each of them shall commence on the second day of January and continue one year, and afterwards until a successor shall be qualified according to law.

§ 3. Each of the said officers shall give bond to be approved by the governor, the penalty of which shall be as follows: Of the secretary of the commonwealth and librarian, ten thousand dollars; of the first auditor, thirty thousand dollars; of the second auditor, twenty thousand dollars; of the treasurer, one hundred thousand dollars; of the register of the land office, ten thousand dollars; of the superintendent of the penitentiary, thirty thousand dollars; of the general agent and storekeeper of the penitentiary, fifty thousand dollars; and of the public printer, five thousand dollars.

§ 4. Each of said officers shall submit his bond to the attorney-general for examination, and if he shall be of opinion that the bond is in proper form and legally executed, the attorney-general shall make an endorsement on it to that effect.

§ 5. The bond of each of the said officers, except the first auditor, shall be transmitted to and filed in the first auditor's office. That of the first auditor shall be recorded in the clerk's office of the general court.

§ 6. If the bond of any such officer be not so approved, or the oaths prescribed be not taken by him, within thirty days after his election, the appointment shall be considered as annulled, and the general assembly, if it be in session, or if not, the governor, may proceed to make a new appointment.

§ 7. Any of the said officers may be removed from office by joint vote of both houses of the general assembly or by the governor during the recess of the assembly. This power shall not be exercised by the governor, except for misbehaviour, incapacity or neglect of official duty. And in any case in which the power may be so exercised by the governor, he shall, immediately after the commencement of the next session of the general assembly, report to the assembly the fact of the removal and the cause thereof.

§ 8. When either of said offices shall become vacant during the recess of the general assembly, the governor may make an appointment to fill the vacancy, and the person appointed, after giving such bond and taking such oaths as are prescribed by law, shall act in the office until an appointment be made by the general assembly and the person appointed by the assembly be qualified according to law.

Appointments by the governor and other executive officers.

§ 9. There shall be annually appointed by the governor, on the first Monday in January, or as soon thereafter as may be, five persons as directors of the penitentiary, and also a

See ante, p. 87,
ch. 13, § 6.

1 R. C. p. 624,
§ 31.
Id. p. 626, § 40.

See ante, p. 90.
ch. 14, § 2, 3, 4, 5.

surgeon of the penitentiary and public guard, who shall be qualified to act as soon as they have taken the oaths prescribed by law and delivered a certificate thereof, or a transcript as directed by the sixth section of the thirteenth chapter. Their term of office shall be until the first Monday in January following, and afterwards until their successors shall be qualified. Vacancies occurring in either of said offices may be filled by the governor from time to time.

§ 10. There shall be appointed by the governor a clerk of the penitentiary, on the recommendation of the board of directors, and seven assistant keepers on the recommendation of the superintendent.

§ 11. The secretary of the commonwealth shall appoint in his office an assistant clerk and a copying clerk.

§ 12. The council of state shall appoint their clerk, and also a doorkeeper of the council.

§ 13. Each of the auditors, the treasurer, and the register of the land office, shall appoint the clerks in his office, as enumerated in the second, third, fourth and fifth sections of the fourteenth chapter.

§ 14. The officers whose appointment is provided for in the five preceding sections may be removed by the persons having the power of appointment, for misbehaviour, incapacity or neglect of official duty, and when the power of appointment is in one person on the recommendation of others, the power of removing shall be exercised on like recommendation.

CHAPTER XIX.

OF THE DUTIES OF THE SECRETARY OF THE COMMONWEALTH; AND CONCERNING THE STATE LIBRARIES.

SEC.		SEC.	
1.	Oath of secretary.	9.	
2.	Secretary's general duties.	10.	How the fund is made available.
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7.	Donations from the fund.	19.	Of the law libraries.
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Secretary of the commonwealth.

1831-2, p. 11, ch
9, § 1.

§ 1. The secretary of the commonwealth, before he acts as such, shall, in addition to the other oaths prescribed by law,

take an oath to keep secret such matters as he shall be required by the governor to conceal.

§ 2. He shall be keeper of the seals of the commonwealth, keep a record of all executive acts, shall arrange and preserve all records and papers belonging to the executive department, be charged with the clerical duties of that department, and render to the governor, in the despatch of executive business, such services as he may require.

§ 3. He shall contract each year for the printing and binding of seven hundred copies of the reports by the reporter of the court of appeals, of the decisions of that court and the general court, in a style not inferior to the reports heretofore published, and also secure the copyright of the said reports for the benefit of the commonwealth.

§ 4. He shall deliver one copy of each volume as soon as practicable to the reporter, and one copy to each judge of the said courts.

Of the secretary as general librarian.

§ 5. He shall be general librarian and have charge of the library fund. He shall account for, apply and pay over all moneys which may come to his hands as librarian, and his official bond shall be a security for the performance of all his duties both as secretary and librarian.

Library fund.

§ 6. The books and maps belonging to the state shall constitute the library fund, except such books or maps as may be appropriated in some way inconsistent herewith.*

Donations from the fund.

§ 7. Out of the books and maps constituting the library fund, such donations may, from time to time, be made to public libraries, learned societies, colleges and other institutions, as may be deemed advisable by the library committee hereinafter mentioned.

§ 8. Of such of the said books and maps as may be hereafter published, the general librarian shall, as soon as convenient after the publication thereof, transmit a copy of the journal of the senate and house of delegates, and eight copies of the law reports to the university of Virginia and college of William and Mary respectively, and a copy of the maps to every incorporated college and academy in the state.

How the fund is made available.

§ 9. All the rest of the books and maps constituting the said fund, except such as it may be proper to have in the libraries belonging to the state, shall be sold.

* As to the origin and sources of the library fund, see acts of 1822-3, p. 15, ch. 12, § 1; 1825-6, p. 9, ch. 7, § 1; 1826-7, p. 12, ch. 8; 1828-9, p. 9, ch. 8, § 1; 1832-3, p. 205, No. 13, § 1; 1829-30, p. 11, ch. 8, § 5; 1840-41, p. 61, ch. 43.

1825-6, p. 9, ch. 8.
1829-30, p. 11, ch.
8, § 3, 4.

§ 10. From time to time he shall place a reasonable number of copies of the reports of decisions, of the maps, and of any other books which may seem to him advisable, in the hands of booksellers, to be sold upon a reasonable commission, selecting such booksellers as may seem to him best, and taking in every case an obligation from the bookseller, specifying the books and maps placed in his hands, the prices at which they are to be sold, and for what commission; and binding him when thereto required by the librarian to account for the said books and maps, return such as may not have been sold, and pay for the balance at the prices specified, after deducting the commission for selling. The librarian may himself sell any of the said books and maps, or make exchanges thereof for other works.

Id.

§ 11. On all sales and exchanges which the librarian may himself make, he shall be allowed a per centage not exceeding one-half of such per centage as may be allowed the booksellers on their sales. On the sales made by booksellers the librarian shall be allowed a commission of five per centum on the money received by him from them.

Library committee.

1827-8, p. 12, ch.
13, § 3.
1829-30, p. 11, 12,
ch. 8, § 5, 8.

§ 12. A joint committee of the general assembly, to be called the library committee, shall be annually appointed, which shall have the direction of the library and library fund, may make such rules for the regulation of the library not inconsistent with this chapter, and prescribe such penalties for violations thereof as may seem to it proper. The general librarian shall, annually, make a report to this committee of his proceedings, and render an account of the receipts and disbursements of the library fund. The committee shall examine his accounts and proceedings, and determine the prices at which the books and maps constituting the library fund may be sold.

How additions are made to the libraries.

1825-6, p. 9, ch. 7,
§ 1.

§ 13. There shall be, annually, procured such books in law, literature, science and the arts, and such maps and charts as it may seem to the committee desirable to procure.

§ 14. In particular the committee shall cause to be procured from time to time, as opportunities may offer, a copy of any book, pamphlet or manuscript relating to the history of *Virginia*, not now in the general library, which can be obtained on reasonable terms.

Duties of general librarian not before mentioned.

1827-8, p. 12, ch.
13, § 1, 2.

§ 15. The general librarian shall make such purchases, and do such other things as the committee may direct, within the scope of their powers. And he shall have under his care, in the room provided therefor in the capitol, the general library and every thing therein.

§ 16. The general library shall be kept open every day in the year, (Sundays and holidays excepted,) such hours in each day as the library committee may direct.

Who may use the general library.

§ 17. The judges of the court of appeals and the general court, the governor and members of the council of state, attorney-general, reporter of the court of appeals, members of the general assembly, and such other officers of government as the library committee may deem proper, shall be allowed to use the same. And any of them may, under such regulations and penalties as the committee may prescribe, take from the library any book except such as the committee shall determine are necessary always to be kept therein. ^{1822-3, p. 15, ch. 12, § 1.}

Committee to keep a journal and report to assembly.

§ 18. A journal of the proceedings of the library committee shall be kept by the general librarian, who shall act as its clerk. And the committee shall report fully to the general assembly.

Law libraries.

§ 19. There shall be two law libraries; one at *Lewisburg*, the other in the state capitol. The library in the capitol shall be under the charge of the general librarian.

§ 20. The person who may fill the office of clerk of the court of appeals at *Lewisburg* shall be librarian there, shall hold his office at the pleasure of the court, and when he is removed from the office of librarian, his office of clerk shall be vacated.

§ 21. Before acting he shall give bond, with one or more sureties approved by the court, in the sum of two thousand dollars, which bond shall be acknowledged or proved in the court, and recorded therein. He may be allowed by the court not exceeding fifty dollars a year, which shall be paid out of the treasury. ^{1839, p. 14, ch. 14, § 2. 1834-5, p. 16, ch. 14, § 2.}

§ 22. The general librarian shall transmit to the librarian at *Lewisburg* a copy of every law book in the library fund not heretofore sent, of which there may be several copies belonging to the said fund, and also have placed in each of the law libraries a copy of every law book which may be hereafter published for the commonwealth, as soon after the publication thereof as it can conveniently be done. ^{1831-2, p. 12, ch. 10, § 3. 1833-4, p. 27, ch. 20. 1834-5, p. 16, ch. 14, § 1. 1835-6, p. 8, ch. 6. 1839, p. 13, ch. 14, § 1. 1844-5, p. 17, ch. 20.}

§ 23. The court of appeals shall have power to make and enforce such rules and orders for the regulation of the law library at each place, as may seem to it proper, so that they be not inconsistent with the provisions of this chapter. But nothing in this section shall be construed to take from the joint library committee the power to alter said rules and orders as may seem proper to said joint committee. ^{1834-5, p. 16, ch. 14, § 2.}

§ 24. Its orders shall be such that the judges of the general court, and other persons allowed under this chapter to use the general library, may use either law library at suitable times, to be prescribed by the court; and the judges of the special court of appeals shall have the same use of the law library as the judges of the supreme court of appeals.

CHAPTER XX.

DUTIES OF THE PUBLIC PRINTER* AND OF THE PRINTER TO THE SENATE.

SEC.		SEC.	
1. } to } 6. }	Public printer's duties for his annual salary.	7. } to } 11. }	Services paid for as extra work.
		12.	Of the printer to the senate.

Public printer.

§ 1. The public printer shall print in octavo form five hundred copies of the journal of the house of delegates as it is furnished him by the clerk, of which, so soon as the same may be printed, one hundred and sixty copies shall be delivered to the sergeant at arms of the house, and forty copies to the sergeant at arms of the senate, to be distributed by them amongst the members of the respective houses, and to such others as either house may authorize by its rules.

1835-6, p. 9, ch. 7, § 3.

§ 2. At the end of each session of the assembly he shall print three hundred copies of the index prepared by the clerk of the house of delegates to the said journal and the documents printed during the session, and bind up the same with the copies of the journal and documents respectively, then remaining in his possession; the journal and index thereto in different volumes from the documents and index thereto. The copies so bound shall be delivered by him to the clerk of the house.

* As early as June 1777, a public printer was appointed, his salary prescribed, and the services designated for which it was allowed. See journal of house of the 24th and 26th June 1777, and the 11th and 13th of May 1780. Yet the act of May session 1780, after reciting that "a good printing press, well provided with proper materials, is indispensably necessary for the right information of the people," empowered the governor "to engage with, and employ at the public expense and for the public service, a good and able printer, of firm and known attachment to the independence of the *United States*, who may be willing to bring a good and well provided press into this commonwealth." 10 Hen. Stat. p. 313. On the 22d of January 1798, an act passed directing the mode of appointing the public printer and prescribing his duties. See acts of 1797-8, p. 32, ch. 55. Subsequent acts 1804-5, p. 13, ch. 20; 1805-6, p. 41, ch. 70, § 7; 1811-12, p. 18, ch. 12, § 3; Id. p. 32, ch. 21, § 4; 1813-14, ch. 28; 1818-19, in 2 R. C. p. 325; 1835-6, p. 9, ch. 7, § 3; 1836-7, p. 23, ch. 28, § 2; 1839, p. 206, No. 6, § 3; 1840-41, p. 61, ch. 43, § 2.

§ 3. He shall, as soon as practicable after the close of each session, print one hundred and fifty copies of the general acts and deliver the same to the secretary of the commonwealth.

§ 4. Within forty days after the termination of the session, he shall print and bind, in the manner prescribed by the sixteenth chapter, four thousand copies of the acts and resolutions passed during such session, with the tables and index, all of which copies shall, so soon as bound, be delivered to the said secretary. See ante, p. 99, ch. 16, § 15.

§ 5. He shall supply the executive department, treasurer, register, each auditor, the board of public works, the board of the literary fund, and the inspectors of tobacco, with blanks. And he shall cause to be published in a public newspaper, or in such other manner as may be directed, proclamations and advertisements from the executive, resolutions of the assembly to be transmitted to members of congress or to other states, notices from the executive or the clerk of the house of delegates of particular laws, and any circulars or intelligence of any kind which the executive in its discretion may require to be published, also all orders and advertisements which he may be directed to publish by any court, the treasurer, register, either auditor, the attorney-general, board of public works, the board of the literary fund, or other corporation of the funds and property of which the state is sole owner.

§ 6. All the foregoing duties shall be performed by the public printer for his annual salary.

§ 7. He shall print in octavo form, on good paper, and have bound in boards, five hundred copies of such reports as the governor may deliver to him to be printed; the copies of the report of the board of public works shall be deposited by the printer in the office of the said board before the meeting of the general assembly, and distributed to the members thereof and such others as the said board may direct. The copies of other reports shall be delivered by the printer on the first day of the meeting of the assembly to the clerk of the house of delegates, who shall distribute the same as the bound copies of the journal of the house are distributed, under the thirteenth section of the fifteenth chapter. 1839, p. 206, No. 6, § 3.
1846-7, p. 241, No. 19, § 2.
1847-8, p. 354, No. 6, § 2.

§ 8. He shall print five hundred copies of each public document which may be directed to be printed by the general assembly or the house of delegates, other than bills; and so many copies, of any bill which the house may order to be printed, as it may direct. 1840-1, p. 158, No. 3.

§ 9. All work done under the two preceding sections, all printing executed on account of the adjutant-general's office, and any printing not before mentioned which may be directed by any special act or resolution of the general assembly, shall be deemed extra work, and be paid for as such.

§ 10. For extra work done for the house an account shall be presented to the speaker, who shall certify the same to the

first auditor for such amount as he may think a reasonable compensation, and the auditor shall grant a warrant therefor on the treasury.

§ 11. For other extra work an account shall be presented to the governor, who shall certify the same in like manner to the first auditor for such amount as may appear to him reasonable, and the auditor shall grant a warrant therefor on the treasury.

Printer to the senate.

1841-2, p. 11, ch.
9, § 6, 7.

§ 12. The senate may appoint annually a printer for that body, who shall, for his annual salary, print and have bound two hundred copies of the journal of the senate, with the index thereto, and perform such other duties as the senate by its rules requires; and all other work which he may do by order of the senate shall be deemed extra work and paid for as is extra work done by the public printer.

CHAPTER XXI.

OFFICE OF THE SUPERINTENDENT OF PUBLIC BUILDINGS, AND OF THE DOORKEEPER OF THE COUNCIL.

SEC.

- | | |
|----|-----------------------------------|
| 1. | } Superintendent's powers and du- |
| 2. | |
| 3. | |
| 4. | } As to the governor's house. |
| 5. | |

SEC.

- | | |
|-----|--------------------------------------|
| 6 | } As to the capitol and state court- |
| 12. | |
| 13. | As to the capitol square. |
| 14. | Superintendent's compensation. |
| 15. | As to the doorkeeper of the council. |

Superintendent's powers and duties generally.

1835-6, p. 15, ch.
13, § 8.

§ 1. The captain of the public guard shall be superintendent of public buildings. He may require the public guard to aid him in the performance of any of the duties pertaining to the office of superintendent, except such as are prescribed in the sixth, seventh, eighth, ninth, tenth and eleventh sections of this chapter.

1 R. C. p. 96, § 11.
1820-21, p. 11, ch.
8, § 1.

§ 2. He shall have under his care the capitol, the state courthouse, and all other public property at the seat of government not placed in the charge of others, and protect the same from depredation and injury as far as practicable.

§ 3. He shall purchase, under the orders of the governor, all such furniture as may be required in the capitol or state courthouse, and have all such repairs made of either building or furniture thereof, as may be directed by the governor; sell the old furniture which may be no longer wanted, and pay

the proceeds into the treasury ; the cost of such repairs and furniture to be paid on the order of the governor.

As to the governor's house.

§ 4. When the term of office of any governor shall expire, or he shall die or resign, the superintendent shall take an inventory of all the public property and furniture in the governor's house and outhouses, and deliver such inventory to the first auditor, to be preserved in his office ; and he shall, unless the house be occupied by the lieutenant-governor, have charge of the house, furniture and other public property, until a governor shall be elected and take possession thereof. 1823-4, p. 33. ch. 29, § 4.

§ 5. He shall purchase for the governor's house, such furniture as may be required by the governor, and sell such old furniture as the governor may direct, taking care not to exceed in his expenditures, such sums as may be appropriated therefor in addition to the proceeds of old furniture sold. An account both of the sales and purchases shall be returned to the first auditor before any warrant shall issue for any part of the sum appropriated, and then the warrant shall only be for so much as by the account shall appear to be proper. 1843-4, p. 20, ch. 20.

As to the capitol and state courthouse.

§ 6. He shall contract with the city of *Richmond* for a supply of water for the use of the capitol and state courthouse ; and after any such contract is approved by the governor, the first auditor shall issue his warrant upon the treasury for what may appear to be payable, in favour of the person authorized to receive the same. Id. p. 21, ch. 22, § 1.

§ 7. He shall keep the keys of the capitol and of the state courthouse, and take charge of all the rooms in the capitol, except the council chamber and the general library. He shall also take charge of the furnaces for warming the state courthouse and the capitol.

§ 8. He shall have all the rooms in the capitol, (other than the rooms excepted in the preceding section,) and the furniture thereof, and also the open parts of the capitol and state courthouse, kept in proper order and cleanliness at all times. 1 R. C. p. 74, § 1. Id. p. 96. § 11. 1820-21, p. 11, ch. 8, § 1. 1835-6, p. 15, ch. 13, § 8.

§ 9. He shall contract for, and have supplied, all the fuel and lights required for the use of the hall of the house of delegates, senate chamber, executive rooms and general library, offices of the clerks of the two houses of the general assembly, the committee rooms thereof, the rooms of the two auditors, treasurer and register of the land office, court and conference rooms in the state court-house, and for the furnaces both in the capitol and the courthouse ; and have the same carefully put away and secured ; the cost of purchasing and having delivered such fuel and lights, to be paid out of the civil contingent fund.

1840-41, p. 33, ch.
5, § 3.

§ 10. He shall have fires made in all the rooms and offices aforesaid in the capitol, (other than those excepted in the seventh section,) and in the furnaces for warming the same, when the said rooms are occupied and the season requires it; have said rooms daily supplied with water; and such of them as fires are made in, visited after the business of the day is over, and all the fires put out or so secured as to prevent danger to the building.

§ 11. He shall have the furnaces in the state courthouse supplied with fuel and kindled whenever required for warming any of the public rooms of said building.

1839-40, p. 24, ch.
12, § 4.

§ 12. He shall not during the recess of the general assembly permit the hall of the house of delegates or the senate chamber to be used except by order of the governor.

As to the capitol square.

1815-16, p. 29, ch.
14, § 7.

§ 13. The council of the city of *Richmond* may enact and enforce ordinances for the regulation and government of the capitol square, subject to the control of the governor. That body may subject to the same control, grant or refuse licenses for the sale of refreshments therein, upon such terms as they may deem reasonable, and appoint a keeper of the said square, who shall be charged with the preservation of the turf, walks and trees thereof, and paid for his services by the said city. Nothing herein shall impair the title of the state in and to said square or its right to sell and dispose of the same.

Compensation of the superintendent.

§ 14. In consideration of the duties imposed on the superintendent of public buildings by this chapter, and to enable him to pay the servants and assistants he may have to employ, he shall receive annually out of the treasury the sum of five hundred dollars, payable quarterly out of the civil contingent fund.

As to the doorkeeper of the council.

1 R. C. p. 74, § 1.

§ 15. The doorkeeper of the council shall attend upon the council while it is sitting, and shall be the messenger of the council and of the governor, and obey their orders. He shall keep the keys of the council chamber; keep it and the furniture thereof in proper order and cleanliness, and have the fires therein seasonably kindled, diligently tended and carefully extinguished, and the room daily supplied with water.

Title 11.

PUBLIC DEFENCE.*

- CHAP. 22. What persons are liable to, and what exempt from military duty; and how they are enrolled.
23. How the militia is organized; description of the officers thereof; where they reside and how they rank; salary of the adjutant-general; his duties; the duties of paymasters and quartermasters; and the authority to employ expresses.
24. How the officers of the militia are appointed, commissioned and qualified; and how they may resign or be removed.
25. Of the training of officers and men, and the music and equipments; their privileges, and the redress against by-standers and others for misconduct.
26. Of the cavalry and artillery, and the volunteer companies generally; their uniform; and the uniform of militia officers.
27. Ordnance and arms; accoutrements, camp-equipage, and houses for cannon; and ammunition.
28. Returns of the militia and of the public arms and ammunition; and reports of delinquents.
29. When the militia is called into actual service.
30. What fines and penalties are incurred for delinquencies; how they are assessed and collected; the allowances out of the same, and the duties and liabilities of the collector.
31. Of boards of officers, courts of enquiry and courts martial.
32. Concerning impresses by military authority and injuries done to real property by military occupation.
33. The public guard and armory.
34. Military school and Lexington arsenal.

CHAPTER XXII.

WHAT PERSONS ARE LIABLE TO, AND WHAT EXEMPT FROM MILITARY DUTY; AND HOW THEY ARE ENROLLED.

SEC.

1. Persons liable to duty.
2. Persons exempt from all duty.
3. Persons exempt from ordinary duties.
4. How militia officers and members of volunteer companies establish their claim to be exempt.

SEC.

5. Courts empowered to exempt from and restore to duty.
7. } How enrolment is made.
10. }

Persons liable to duty.

§ 1. Every able-bodied male citizen between the ages of eighteen and forty-five, resident within this state, and not exempt from serving in the militia by the laws of the *United States*, or of this State, shall be subject to military duty.

Act of Congress of May 1792, § 1.
Act of Virginia of 1833-4, p. 35, § 32.

* Under the colonial government, the militia were organized at an early period. See Hen. Stat. vol. 1, p. 525; id. vol. 2, p. 246, 433, 469, 498; id. vol. 3, p. 13, 17, 209. The militia laws were revised in 1705, 3 Hen. Stat. p. 335 and 362; and in 1723, 4 Hen. Stat. p. 118, 140; and afterwards from time to time. The ordinances of convention and acts of assembly relating to the subject during the war of the revolution, are very numerous. After the war the laws were re-

Persons exempt from all duty.

Act of Congress
of May 1792, § 2.
Act of Virginia of
1833-4, p. 34, § 30.
1846-7, p. 16, ch.
15, § 5.

§ 2. The following persons shall be exempt from the performance of all military duties whatever, to wit: The vice-president of the *United States*; the officers, judicial and executive of the government of the *United States*; the members of both houses of congress, and their respective officers; all custom-house officers with their clerks; all post-masters, post-officers, post-riders and stage-drivers, and all other persons employed in the care and conveyance of the mail of the *United States*; all ferrymen employed at any ferry on any post-road; all inspectors of exports; all pilots, and all mariners actually employed in the service of any citizen or merchant within the *United States*; the members of the council of state, clerk of the council, secretary of the commonwealth and his clerks, and door-keeper of the council; the clerks of both houses of the general assembly; the judges of the court of appeals and general court; the clerks of the said courts and of the circuit, county and corporation courts; all sheriffs, and sergeants of corporations; the attorney-general; the treasurer, two auditors and register of the land office, and all their clerks; all inspectors of tobacco; all professors, tutors and pupils of public seminaries of learning; all ministers of the gospel licensed to preach according to the rules of their sect; keepers of the county and corporation jails; superintendents and servants of the public hospitals and lunatic asylums; and the superintendent of the penitentiary and his assistants.

Persons exempt from ordinary duties.

1827-8, p. 15, ch.
22, § 1.
1828-9, p. 48, ch.
72, § 1.
1831-2, p. 17, ch.
20, § 6.
1833-4, p. 32, § 18;
p. 34, § 30, 31; p.
37, § 45.
1839, p. 24, ch. 30;
p. 103, ch. 146.
1843-4, p. 22, ch.
24, § 3.
1844-5, p. 17, ch.
19, § 1.
1845-6, p. 34, ch.
41, § 7.
Id. p. 40, ch. 42,
§ 9.

§ 3. The following persons shall be exempt from the performance of the ordinary duties of militiamen, but shall be liable to be drafted and detailed for actual service, to wit: The officers of the several banks established by law, and of their respective branches; all millers necessarily and personally employed in any grist mill; all ferrymen in like manner employed at any ferry established by law; the general agent and storekeeper of the penitentiary and his clerks; two of the clerks in the office of collector of tolls on the lower section of the *James* river canal; the inspectors of boats, lock-gate keepers and overseers employed by the *James* river and *Ka-*

vised in 1784, 11 vol. of Hen. Stat. p. 477, ch. 28, and in 1785, id. vol. 12, p. 1, ch. 1. Congress having, under the federal constitution, passed the act of the 8th of May 1792, in 1 Story's Laws U. S. p. 252, the legislature of *Virginia*, to carry the same into effect, passed the act of the 22d of December 1792, in 13 Hen. Stat. p. 340. Congress, on the 2d of March 1803, passed an act, (in addition to its former act,) which is in 2 Story, p. 888; and the legislature of *Virginia*, at its ensuing session, passed the revised act of 1803-4, p. 3, ch. 1. Congress has passed subsequent acts, which are in 2 Story, p. 1424, and 3 Story, p. 1573, 1786 and 1811; 1835-6, p. 19, ch. 44.

The act of *Virginia* of the 9th of March 1819, in the first volume of the Code of 1819, p. 93, ch. 35, is a compilation of the act of 1803-4, and the amendments thereto. The act of 1819, and the acts amendatory thereof, were revised by the act of 1833-4, p. 28, ch. 22. The act last mentioned, and those which have since passed in relation to the militia, are revised under this title.

nawha company; the six lock-keepers of the *Dismal Swamp* canal company; and all toll-gatherers on any canal or turnpike company in the state; the four persons composing the guard for the interior of the penitentiary; the officers and members of all fire companies who are entitled to exemption by the provisions of the fourth section of chapter fifty-five; the police in cities and towns; all school commissioners, trustees of district free schools, and, during the sitting of the court of appeals, the tipstaff and crier thereof; also every officer of the militia who may resign his commission after serving seven years successively; and every non-commissioned officer or member of a uniformed and armed volunteer company who shall have served, in one or more such companies, for seven successive years, of which at least two shall have been in each company.

Id. post. ch. 55, § 4.

How militia officers and members of volunteer companies establish their claim to be exempt.

§ 4. Before such exemption shall be allowed to any officer of the militia, or to any officer or member of a volunteer company, there shall be produced to the regimental court of enquiry, in the former case, a certificate of seven years services from the commandant or commandants of the regiment or regiments, and in the latter, a certificate of the like services from the commandant or commandants of the company or companies.

1831-2, p. 17, ch. 20, § 6.
1833-4, p. 37, § 46.

Courts empowered to exempt from and restore to duty.

§ 5. A regimental court of enquiry may exempt any person from militia duty on account of bodily infirmity, and may again direct such person to perform duty when able. The clerk of such court shall furnish such person with a certificate of any such exemption.

Id. p. 42, § 76.

How enrolment is made.

§ 6. The commanding officers of companies shall enrol every able-bodied citizen between the ages of eighteen and forty-five, resident within his district, and return the same to the regimental court of enquiry. The list shall be in the following form:

Id. p. 42, § 35.
Act of Congress of May 1792, § 1.

List of persons liable to be enrolled in the militia.

REGIMENT No.

NAMES.	States himself to be exempt from all duty.	States himself to be exempt from ordinary duty.	Company, district No.	Total number.	REMARKS.
A. B. . .					
C. D. . .					
F. G. . .					

I, _____, captain of company No. _____, and of regiment No. _____, do certify that the foregoing is a true list of all the persons within my district liable to be enrolled in the militia.

A. B., Captain.

Act of Congress
of May 1792, § 1.

§ 7. Where there is a question as to the age or right to exemption of any person so listed, the burthen of proof shall be upon him. But such person may appeal to the court of enquiry, and he shall be enrolled or not as such court shall determine.

Id. § 76.

§ 8. The regimental court of enquiry shall annually examine the said lists, and if necessary, correct the same by placing in the column of exempts those who are exempt from all duty under the second section of this chapter, and striking therefrom those who are not, and by striking from said lists the names of those who have been returned by the commandants of volunteer companies, as members of the companies, and adding thereto such names as may have been omitted; so that the said corrected lists may show the exact number of persons in each district "exempt from all duty," the persons "exempt from ordinary duties," and of all other persons, except those serving in volunteer companies, liable to duty in the line.

1831-2, p. 17, ch.
20, § 7.
1833-4, p. 35, § 32.
1841-2, p. 18, ch.
21, § 2.

§ 9. Every commandant of a company of the line shall annually make out, from the corrected list mentioned in the preceding section, a roll of every person resident within his company district liable to militia duty, whether exempt or not, designating on said roll those who are "exempt from all duty," and those who are "exempt from ordinary duties," and furnish his lieutenants a copy thereof.

1833-4, p. 36, § 7.
1839-40, p. 26, 7,
ch. 16, § 1.

§ 10. Whenever any company of the line shall be without a commissioned officer, the commandant of the regiment shall order his adjutant, or some other officer of the line, to enrol such company, and return a muster-roll thereof to the regimental court of enquiry, which shall be preserved by the clerk of said court and be subject to the orders of the commandant of the regiment. Such adjutant or officer shall also notify and muster the company. These duties shall be performed so long as the company may continue without a commissioned officer.

CHAPTER XXIII.

HOW THE MILITIA IS ORGANIZED; DESCRIPTION OF THE OFFICERS THEREOF; WHERE THEY RESIDE AND HOW THEY RANK; SALARY OF THE ADJUTANT-GENERAL; HIS DUTIES; THE DUTIES OF PAYMASTERS AND QUARTERMASTERS; AND THE AUTHORITY TO EMPLOY EXPRESSES.

SEC.		SEC.	
1.	General organization.	15.	How the militia is officered.
2.	Divisions and brigades.	16.	Staff of the generals and colonels.
6.		17.	
7.	Cavalry and artillery regiments.	18.	Residence of generals.
8.	Regiments of infantry.	19.	Of the rank of officers generally; and the officer to command.
9.	How regiments are formed or altered.	20.	
10.		21.	When commissions of officers are void.
11.	Subdivision and strength of regiments, battalions and companies.	22.	
12.	How battalion or company districts are designated and recorded.	23.	Rank of adjutant-general and his place of business.
13.	How companies are kept to their proper strength.	24.	Duties and salary of adjutant-general.
14.	How companies are transferred from one regiment to another.	25.	
		26.	Duties of paymasters.
		27.	Duties of quartermasters.
		28.	Duties of other staff officers.
		29.	When expresses may be employed to carry orders.
		30.	

General organization.

§ 1. The militia of this state shall be organized into divisions, brigades, regiments, battalions and companies. There shall be five divisions and twenty-six brigades. Act of Congress of May 1792, § 3, 4.

Divisions and brigades.

§ 2. The *first division* shall be composed of the *fourth, eleventh, twelfth and fifteenth brigades*; and the following counties and towns shall compose the said brigades, to wit: the counties of Chesterfield, Nottoway, Amelia, Powhatan, Cumberland, Buckingham and Appomattox shall be the *fourth brigade*; the counties of Pittsylvania, Halifax, Charlotte and Prince Edward, the *eleventh*; the counties of Henry, Patrick, Franklin, Campbell and Bedford, and the town of Lynchburg, the *twelfth*; and the counties of Dinwiddie, Greenesville, Brunswick, Lunenburg and Mecklenburg, and the town of Petersburg, the *fifteenth*. 1833-4, p. 29, ch. 22, § 1. 1834-5, p. 24, ch. 22, § 3. 1844-5, p. 40, § 8.

§ 3. The *second division* shall be composed of the *first, third, fifth and sixth brigades*; and the following counties shall compose the said brigades, to wit: the counties of Culpeper, Rappahannock, Madison, Orange, Greene, Spottsylvania and Caroline, shall be the *first brigade*; the counties of Louisa, Goochland, Fluvanna, Albemarle, Nelson and Amherst, the *third*; the counties of Fauquier, Prince William, Stafford and 1833-4, p. 28, ch. 22, § 1. 1838, p. 53, § 8.

King George, the *fifth*; and the counties of Loudoun, Fairfax and Alexandria, the *sixth*.

1833-4, p. 28, ch. 22, § 1.
1834-5, p. 39, § 8.
1835-6, p. 19, § 8; p. 21, § 8; p. 23, § 8.
1841-2, p. 36, § 8.
1842-3, p. 36, § 8; p. 39, § 8.
1843-4, p. 36, § 8.
1844-5, p. 19, § 8; p. 43, § 8.
1845-6, p. 53, § 8.

§ 4. The *third division* shall be composed of the *seventh, tenth, sixteenth, eighteenth, twentieth, twenty-third and twenty-fourth brigades*; and the following counties shall compose the said brigades, to wit: the counties of Rockingham, Shenandoah, Page and Warren, shall be the *seventh brigade*; the counties of Monongalia, Marion, Harrison, Tyler and Preston, the *tenth*; the counties of Frederick, Clarke, Berkeley, Jefferson and Morgan, the *sixteenth*; the counties of Hampshire, Hardy, Pendleton and Highland, the *eighteenth*; the counties of Lewis, Gilmer, Braxton, Randolph, Barbour and Pocahontas, the *twentieth*; the counties of Tyler, Wood, Ritchie, Doddridge, Wirt and Wetzel, the *twenty-third*; and the counties of Brooke, Ohio, Marshall and Hancock, the *twenty-fourth*.

1833-4, p. 28, ch. 22, § 1.

§ 5. The *fourth division* shall be composed of the *second, eighth, ninth, fourteenth and twenty-first brigades*; and the following counties and cities shall compose the said brigades, to wit: the counties of Charles City, New Kent, Hanover, Henrico and the City of Richmond, shall be the *second brigade*; the counties of Isle of Wight, Nansemond, Surry, Southampton, Sussex and Prince George, the *eighth*; the counties of James City, York, Elizabeth City, Warwick, Princess Anne and Norfolk, and the City of Norfolk, the *ninth*; the counties of Gloucester, Matthews, Middlesex, Essex, King William, King & Queen, Lancaster, Northumberland, Richmond and Westmoreland, the *fourteenth*; and the counties of Accomack and Northampton, the *twenty-first*.

Id. p. 29.
1836-7, p. 33, § 2.
1838, p. 56, § 8.
1839, p. 32, § 8.
1841-2, p. 33, § 8.
Id. p. 38, § 8.

§ 6. The *fifth division* shall be composed of the *thirteenth, seventeenth, nineteenth, twenty-second, twenty-fifth and twenty-sixth brigades*, and the following counties shall compose the said brigades, to wit: the counties of Rockbridge, Augusta, Bath and Alleghany, shall be the *thirteenth brigade*; the counties of Washington, Russell, Lee and Scott, the *seventeenth*; the counties of Giles, Mercer, Monroe, Greenbrier, Fayette and Nicholas, the *nineteenth*; the counties of Kanawha, Mason, Cabell, Wayne, Jackson, Putnam, Boone and Logan, the *twenty-second*; the counties of Wythe, Smyth, Grayson, Carroll and Tazewell, the *twenty-fifth*; and the counties of Montgomery, Floyd, Pulaski, Roanoke and Botetourt, the *twenty-sixth*.

REGIMENTS, BATTALIONS AND COMPANIES.

Cavalry and artillery regiments.

1833-4, p. 36, § 42.

§ 7. The cavalry and artillery in each division shall compose one regiment of cavalry and one regiment of artillery, to be denominated the first, second, third, fourth and fifth regiments of cavalry or artillery, as the case may be.

Regiments of infantry.

§ 8. The several regiments of infantry, as at present numbered, shall continue as now established in the several counties and parts of counties and corporations, by the regimental metes and bounds heretofore assigned them. 1833-4, p. 29, § 2, 3.

How regiments are formed or altered.

§ 9. The governor, in his discretion, may alter or divide the regimental districts in the several counties and corporations, and may so alter or divide the same as either to increase or diminish the number of regiments. But each regiment which he may form or change shall consist of at least four hundred men, rank and file. Id. § 2. 1839-40, p. 28, § 7. 1841-2, p. 19, § 12.

§ 10. When any regiment has been established and numbered, and the law or an executive order shall change the same, or where several regiments shall be consolidated, the governor may change the numbers of the succeeding regiments, to conform them to the actual number in the state, and new commissions may be issued to the officers of the regiments whose numbers are so changed, preserving to such officers their respective rank, according to their original commissions.

Subdivision and strength of regiments, battalions and companies.

§ 11. Every regiment shall be composed of two battalions, and the regiments of infantry of the line shall consist of at least four hundred men, rank and file. But no regiment, as now organized, shall be dissolved unless it shall fall below three hundred men, rank and file. In each battalion of infantry, there shall be at least four companies of the line, besides such volunteer companies as may be attached thereto. Each company of the line shall consist of not less than fifty, nor more than one hundred men, rank and file. 1833-4, p. 29, § 4. 1839-40, p. 28, § 7. 1841-2, p. 19, § 12.

How battalion or company districts are designated and recorded.

§ 12. When a board of officers shall lay off or alter any battalion or company district, as authorized by chapter thirty-one, they shall designate the same by certain metes and bounds. Until so altered, such districts shall continue as now established. Such districts and all regimental districts, as designated by law or executive orders, shall be recorded by the clerks of the respective courts of enquiry. 1833-4, p. 46, § 101.

How companies are kept to their proper strength.

§ 13. Whenever any company of the line shall contain more than the maximum, or less than the minimum of men allowed it, such board of officers may either create a new Id. p. 29, § 4.

company district in the first case, or apportion it among other companies in the last, or make such arrangement of the bounds of adjoining company districts as shall reduce or increase the strength of such company to its proper number. If a new company be created by such change, it shall be attached to its proper battalion, and if any company be thereby dissolved, such board shall report the fact to the executive with the names of the officers of such company.

How companies are transferred from one regiment to another.

1839-40, p. 28, § 7.

§ 14. If it shall be necessary in the formation of new regiments, to transfer to the same any company, from regiments previously established, the governor shall issue new commissions to the officers of such company, designating the proper regiment to which they belong, and conferring the rank held by said officers before such transfer was made.

OFFICERS.

How the militia is officered.

1833-4, p. 30, § 6;
p. 31, § 9.
1834-5, p. 23, ch.
22, § 1.
Acts of Congress
of 1792, 1803,
1814, 1816.

§ 15. There shall be a major-general for each division of the militia; a brigadier-general for each brigade; a colonel for each regiment; a lieutenant-colonel for each first battalion; a major for each second battalion; and a captain, two first and two second lieutenants, five sergeants, and six corporals for each company.

Staff of generals and colonels; and residence of generals.

1833-4, p. 31, § 11.
Act of Congress
of 1814.

§ 16. The staff of a major-general shall consist of one division inspector, with the brevet rank of a lieutenant-colonel of infantry; two aids de camp, and one division quartermaster, each with the brevet rank of a major of infantry.

1833-4, p. 31, § 12.
Acts of Congress
of 1803 and 1814.

§ 17. The staff of a brigadier-general shall consist of one brigade inspector, with the brevet rank of a major of infantry; one aid de camp, with the rank of a captain of infantry; and one brigade quartermaster, with the brevet rank of a captain of infantry.

Id. p. 31, § 14.

§ 18. The staff of a colonel shall consist of one quartermaster, one paymaster, one surgeon, one surgeon's mate, one adjutant with the rank of a captain; one sergeant-major, one quartermaster sergeant, and when in actual service an additional surgeon's mate, and two principal musicians, to be styled drum and fife majors.

Id. p. 30, § 6, p.
31, § 13.

§ 19. Each major-general and brigadier-general shall reside within the limits of his command.

Of the rank of officers generally; and the officer to command.

Id. p. 32, § 16.

§ 20. The governor may bestow brevet rank upon any person in actual service for distinguished military merit.

§ 21. The relative rank of officers of the same grade shall be determined by their commissions. When any question shall arise as to relative rank, it shall be determined by the governor.

1834-5, p. 23, ch. 22, § 12.
Act of Congress of May 1792, § 8.

§ 22. In case of the absence, death, or resignation of the superior officer in command, the next officer in rank in such command shall be commanding officer during such absence or vacancy, and shall perform all the duties of such commanding officer, and for neglect therein, shall incur the penalties annexed thereto.

1833-4, p. 33, § 20.

When commissions of officers are void.

§ 23. There shall be no supernumerary officers in the militia. The commissions of all those who hold no command, or whose companies are dissolved, shall be void, and the persons holding them, unless otherwise exempt, shall return to the ranks.

Id. p. 32, § 18.

Rank, duties and salary of adjutant-general; and his place of business.

§ 24. There shall be an adjutant-general, who shall have the brevet rank of a brigadier-general. He shall reside and keep his office at the seat of government, but when the public service shall render it expedient, the governor may direct him to remove with his office to any other place within the state.

Id. p. 30, § 6, p. 33, § 21.
Acts of Congress of 1792 and 1803.

§ 25. The adjutant-general shall execute all orders of the executive, and keep a record thereof. He shall prepare general regulations, prescribing the duties of the different departments of the militia, which, when approved by the executive, shall be respected and obeyed. He shall be quartermaster-general, and as such shall have charge of the quartermaster's department throughout the state, and issue orders to all quartermasters requiring returns and reports, and giving instructions for the preservation of the public property. He shall be commissary-general of ordnance, and as such shall direct the inspection and proving of all ordnance and ammunition, and the preparation thereof for service, and the construction of all carriages and apparatus for ordnance, and all ammunition wagons and travelling forges. He shall have the direction of the laboratories; shall cause all arms, ordnance and munitions of war in the armory, magazines and arsenals, to be kept in good order, and at least once a year shall inspect the same. Returns shall be made to him of the strength and condition of the militia, the state of the public arms and property applicable to military purposes, and of all that may be necessary to keep up an ample supply of every article required for the public service, and he shall report to the executive once a year, and at other times if required. All the duties attached to his office shall be performed under the regulations of the executive,

1833-4, p. 33, 4, § 21 to 27 and p. 34 § 29.
Acts of Congress of 1792 and 1803.

and according to the laws of this state and of the *United States*.*

1840-41, p. 56, § 4. § 26. The adjutant-general shall receive for his services one hundred dollars a year, payable quarterly as other salaries are paid.

Duties of paymasters, quartermasters, and other staff officers.

1833-4, p. 31, § 14. § 27. Each paymaster attached to a colonel's staff shall be charged with the payment of the militia of the regiment to which he belongs when in the service of the state. The commandant of the regiment shall cause him, upon going into actual service, to give bond with sureties, payable to the commonwealth of *Virginia* in the penalty of seven thousand dollars, with condition for the faithful performance of his duties, which bond shall be filed with the clerk of the regimental court of enquiry for the regiment.

Id. § 28. Each quartermaster shall be charged with the quartering and transporting troops and their provisions and equipage, the safe keeping and transporting of military stores and materials of every kind, and generally with all matters relating to his department, under regulations from the adjutant-general, and as prescribed for quartermasters in the army of the *United States*. The commandant of the regiment shall cause him, upon going into actual service, to give bond with sureties, payable as aforesaid, under the like penalty, with like condition, and which shall be filed in like manner as the bond executed by a paymaster.

§ 29. All other staff officers, whether of divisions, brigades or regiments, shall, in their respective offices, be governed by the laws and regulations which govern similar officers in the army of the *United States*, unless otherwise provided by law.

When expresses may be employed to carry orders.

Id. p. 31, 2, § 15. § 30. Commandants of divisions and brigades, and in cases of emergency, commandants of regiments, may employ some person in their respective districts to convey their orders by express or otherwise. They shall give to the person employed a certificate that the service required of him has been performed, and such certificate shall be produced to the court of enquiry for the regiment in which he resides, before such court shall make him an allowance under the forty-third section of the thirtieth chapter.

* The act of congress of the 8th of May 1792, (1 Story's Laws U. S., p. 254,) provides, "That there shall be an adjutant-general appointed in each state," and prescribes many of the duties of this officer. By an additional act, approved the 2d of March 1803, (in 2 Story, p. 888,) it is made the duty of the adjutant-general of the militia, in each state, to make return of the militia of the state to which he belongs, with their arms, accoutrements and ammunition, agreeably to the directions of the act of 1792, to the president of the *United States*, annually, on or before the first Monday in January, in each year; and made the duty of the secretary of war, from time to time, to give such directions to the adjutant-generals of the militia, as shall, in his opinion, be necessary to produce an uniformity in the said returns, and he is to lay an abstract of the same before congress on or before the first Monday of February, annually.

CHAPTER XXIV.

HOW THE OFFICERS OF THE MILITIA ARE APPOINTED, COMMISSIONED AND QUALIFIED; AND HOW THEY MAY RESIGN OR BE REMOVED.

SEC.		SEC.	
1.	How general officers are elected.	14.	} Rules applicable to elections both of field and company officers.
2.	How the adjutant-general is appointed.	15.	
3.	} How field officers are elected.	16.	
to 6.		17.	} How officers are commissioned, and when and how they qualify.
7.		18.	
to 12.	} How company officers are elected.	19.	
13.		20.	} How officers resign or are removed.
		21.	
		22.	When office is vacated, copy of militia laws to be returned.

As to appointment of general officers; and adjutant-general.

§ 1. Major-generals and brigadier-generals shall be elected by joint vote of the general assembly. 1833-4, p. 30, § 6.

§ 2. The adjutant-general shall be appointed by the governor; and any executive officer shall be capable of receiving the said appointment. Id. 1840-41, p. 56, § 4.

How field officers are elected.

§ 3. When a vacancy exists in the office of any field officer of infantry of the line, the commandant of the regiment shall order the commissioned officers of the several companies composing such regiment, and the commissioned officers of the other companies attached thereto, to assemble on an appointed day, at the place at which such regiment usually musters, or at the place at which the officers of such regiment are usually trained, for the purpose of holding an election to fill the vacant office, and when so assembled, they shall proceed to elect the officer necessary. A majority of such commissioned officers shall constitute a quorum. 1833-4, p. 30, § 6, 7, 8.

§ 4. Whenever a new regiment shall be created, company districts formed therein, elections for company officers held, and the persons elected commissioned, the adjutant-general shall issue the requisite order to the officer first in rank of said regiment, and it shall be the duty of such officer to convene the said company officers at some convenient place; and when a majority of all the commissioned officers of the regiment shall be assembled, they shall proceed in like manner to elect field officers for such new regiment. 1845-6, p. 21, § 4.

§ 5. Elections of field officers of the line shall be superintended by the three officers of highest grade in the regiment who may be present, and not themselves candidates for promotion in said election. 1833-4, p. 30, § 7.

§ 6. The governor shall appoint to each regiment of cavalry, and to each regiment of artillery, a colonel, lieutenant-colonel and major.

How company officers are elected.

1833-4, p. 30, § 6. § 7. Captains and lieutenants shall be elected by the non-commissioned officers, musicians and privates, of their respective companies, a majority of which shall constitute a quorum.

Id. p. 30, § 8. § 8. If a captain for any company is required to be elected, the commandant of the regiment shall order the company to be assembled for such election. If a lieutenant be required, the commanding officer of the company, or if there be none, one of the field-officers of the regiment shall issue such order. For new companies, the order shall designate the day and place of meeting; for an existing company, its usual place of mustering, and some convenient time shall be specified.

Id. p. 30, § 7. § 9. Elections of captains shall be superintended by the commandant of the regiment, or by such officer as he may designate; elections of lieutenants by the captain of the company, or in his absence by any other captain in the regiment.

1838, p. 38, ch. 28, § 2. § 10. If in any regiment there be no such officer to order and superintend the election of officers, it shall be lawful for the court of the county or corporation in which such regiment may be, to recommend to the governor, for each vacant company therein, a suitable person as captain thereof, and such person shall be commissioned as if he had been elected.

1834-5, p. 23, ch. 21, § 11. § 11. If any company, after having been duly ordered and notified, shall twice fail to meet and hold an election to supply any vacancy in the office of captain or lieutenant of such company, the commandant of the regiment (by and with the advice of his field-officers, if any such there be,) shall recommend to the executive a suitable person to fill such vacancy; and the executive, upon receiving such recommendation, signed by such commandant and one or both of the field-officers, shall issue commissions accordingly.

1833-4, p. 31, § 9. § 12. Each commandant of a company of the line shall appoint for his company the requisite number of non-commissioned officers. But all volunteer companies may elect the said officers in the manner prescribed by their by-laws.

How staff-officers are appointed.

Id. § 10. § 13. Each major-general, brigadier-general and colonel, shall appoint his own staff, who shall reside within the limits of the division, brigade or regimental district for which they are appointed.

Rules applicable to elections both of field and company officers.

1834-5, p. 22, ch. 21, § 7. § 14. Any vacancy which may occur at the election of a company or field-officer, by reason of such election, may be filled forthwith, without further notice.

§ 15. If in any election the votes for different candidates be equal in number, the officer present, highest in rank, shall give the casting vote. 1834-5, p. 22, ch. 21, § 8.

§ 16. Every person thinking himself aggrieved by the proceedings at any election for a commissioned officer, may appeal to the governor; and if the said proceedings in the governor's opinion are illegal, he shall declare the election void, and shall order a new election to be held without delay. In all such cases of appeal, due notice thereof shall be given to the adverse party.

How officers are commissioned; and when and how they qualify.

§ 17. The governor shall commission the several major-generals, brigadier-generals and the adjutant-general, the several field-officers of cavalry and artillery, and all other officers of whose election he shall be notified. Every commission shall express the number of the division, brigade and regiment to which the officer shall belong. 1833-4, p. 29, § 3; p. 30, § 6, 7; p. 31, § 13; p. 36, § 42.

§ 18. The commission shall be transmitted, in the case of any general officer, to the person commissioned, and in all other cases to the commandant of the regiment to which the officer belongs or is attached, and be by him delivered to the officer commissioned. If the person so commissioned shall refuse to accept his commission, or fail for thirty days after receiving the same to take the oaths prescribed by the first, second and third sections of the thirteenth chapter, the officer to whom such commission was transmitted shall certify the fact to the adjutant-general; the commission of the officer so failing to qualify or refusing to accept it shall be forfeited; and the officer whose duty it is shall order a new election, or make a new appointment as the case may require. Id. p. 23, § 19. Vide ante, p. 86, ch. 13, § 1, 2, 3.

§ 19. When the oaths prescribed by the thirteenth chapter are taken by a major-general, or a brigadier-general, or by the adjutant-general, the record of the transcript or certificate mentioned in the sixth section of that chapter shall be in the adjutant-general's office. When the said oaths are taken by a person elected or appointed to any other military office or post, the record of such transcript or certificate shall be in the order book of the commandant of the regiment to which such person belongs or is attached. Id. p. 33.

How officers resign or are removed.

§ 20. Any general or commandant of a regiment not in actual service, nor under arrest, who shall have held a commission at least three years, may resign his office at any time by letter or by tendering his commission to the governor. Any other officer, under like circumstances, may resign in like manner to the commandant of the regiment to which he may be attached, who shall, thereupon, cause the vacancy to be filled. Id. p. 32, § 17. 1834-5, p. 23, ch. 21, § 12.

For good cause, the governor or commandant of the regiment may permit such officer to resign at any time. Any officer in actual service may resign by permission, in writing, from the commandant of the corps with which he is serving.

1833-4, p. 32, § 17. § 21. Any officer shall forfeit his commission who shall remove from the bounds of his regiment, or cease to perform the duties of his office for one year.

When office is vacated, copy of militia laws to be returned.

§ 22. Every officer of the militia, in case of his resignation or removal, or his personal representative in case of his death, shall deliver the copy of the militia laws and articles of war, and any other books which may have been furnished him by the state, to the clerk of the court of enquiry of the regiment to which he belonged at the time of his resignation, removal or death.

CHAPTER XXV.

OF THE TRAINING OF OFFICERS AND MEN, AND THE MUSIC AND EQUIPMENTS; THEIR PRIVILEGES; AND THE REDRESS AGAINST BYSTANDERS AND OTHERS FOR MISCONDUCT.

SEC.	SEC.
1. } Number and months of musters;	12. Power of the governor in relation
2. } and the days, places and duration	to trainings.
3. } thereof.	13. When officers of different regi-
4. } Notices of musters and trainings.	ments train together, who com-
5. }	mands.
6. What musters are attended by field	14. Notices for trainings.
and staff officers.	15. Reviews.
7. } At all musters, delinquents to be	16. Privileges of officers and men.
8. } noted, and men to be drilled.	17. }
9. } Officers to be trained; how, when	18. } Music and equipments.
10. } and where.	19. }
11. Where more than one regiment in a	20. } Misconduct of officers, men or
county or city.	21. } bystanders.
	22. }

Musters.

1833-4, p. 35,
§ 33.
1834-5, p. 22, 3,
ch. 21, § 9.
1845-6, p. 20,
§ 1, 3.

§ 1. There shall be a muster of each regiment annually in April or May, unless the court of enquiry, or board of officers for such regiment, shall substitute battalion musters therefor, and then there shall be in the said months two separate battalion musters in lieu of the regimental muster, and when such battalion musters are substituted, notice thereof shall be given to the brigadier-general of the brigade to which such regiment belongs. There shall also be a muster of each company, including volunteer companies, semi-annually, in the months of April and October.

§ 2. Such musters (unless fixed by the brigadier-generals as hereafter prescribed for reviews,) shall take place at such times and places as said court or board may from time to time direct, and shall not continue for more than one day. But when battalion are substituted for regimental musters, such places shall be designated therefor, within the respective battalion districts, and such days shall be appointed as will enable the commandant and staff of the regiment to attend both battalion musters. The commandants of regiments, battalions and companies, at their respective musters, shall keep the men on duty for two hours at least. Every officer and soldier shall appear at his muster ground, on the day appointed, by eleven o'clock, A. M. But the said courts or boards may change the hour for any muster.

§ 3. If from any cause the times and places of any of said musters shall not be appointed as hereinbefore directed, the commandant of the regiment in which such failure may occur shall fix and order the times and places of the same.

§ 4. Notices shall be given of the times and places of regimental or battalion musters, and of the training of the officers, by commandants of regiments to commandants of battalions at least thirty days; by commandants of battalions to commandants of companies at least twenty days; by commandants of companies to their lieutenants at least fifteen days; and the non-commissioned officers and privates shall be notified of the time and place of such musters by advertisement to be set up by the commandant of the company at three separate places in the company district, at least ten days previous to such muster.

§ 5. Notices to commandants of battalions shall be in writing, and shall be delivered to them, or left at their usual place of abode. Other notices may be given either verbally or in writing, in like manner.

§ 6. At every regimental muster, or at every battalion muster substituted therefor, the field and staff officers shall attend. At such battalion musters, the commandant of the regiment shall act as instructor. The staff officers shall at the said musters perform the duties pertaining to their respective offices.

§ 7. At every muster, the commandant shall cause his roll to be called, and all delinquents to be noted.

§ 8. The commandant shall instruct the men in battalion or company drill as the case may require, according to the discipline prescribed by the laws of the *United States*. *

* The act of congress of May 1792 provides in § 7, (1 Story's Laws U. S., p. 254-5,) "that the rules of discipline approved and established by congress in their resolution of the 29th of March 1779 shall be the rules of discipline to be observed by the militia throughout the *United States*; except such deviations from the said rules as may be rendered necessary by the requisitions of this act or by some other unavoidable circumstance. It shall be the duty of the commanding officer, at every muster, whether by battalion, regiment or single company, to cause the militia to be trained and exercised agreeably to the said rules of discipline." This section (approving the rules of discipline of the baron de Steuben,) was

Trainings of Officers.

Id. p. 40, § 64;
p. 31, § 14.

§ 9. There shall be annually, on each of the three days immediately preceding the regimental muster, or the first of the battalion musters substituted therefor, a meeting of the commissioned officers of each regiment and those attached thereto, together with the adjutants and sergeant-majors thereof, for the purpose of being trained and instructed in military exercises and discipline.

Id. p. 40, § 64, 5.

§ 10. The commandant of the regiment shall determine the hour and place of meeting. He shall have the command, shall have the roll called each day, and the delinquents noted.

Id. p. 40, § 65.
1839-40, p. 27, ch.
16, § 4.

§ 11. Where there are more regiments than one in a county or city, the officers of each regiment, and those attached thereto, shall meet together at the courthouse thereof at such time as the senior colonel may appoint for the purpose of such training. But the governor, for good cause, may authorize a separate training for said regiments. When such authority is given, the time and place for such training shall be designated by the respective regimental courts of enquiry or boards of officers, or by the commandants of each regiment, in case said courts or boards shall fail to make such designation.

§ 12. The governor may at any time change or prescribe the place for the training of the officers of any regiment, upon the recommendation of a majority of the officers of such regiment. Upon a similar recommendation he may authorize officers of two or more adjoining regiments to train together, and designate the places of such training.

1833-4, p. 40, § 65.

§ 13. The commandants of the respective regiments, when the officers of more than one regiment train together, shall on each day require their rolls to be called and the delinquents noted. The senior commandant of said regiments, when united, shall command, but it shall be his duty to require the junior commandants of regiments present occasionally to conduct the drill.

1833-4, p. 35, § 34.

§ 14. Where the officers of more than one regiment are to be trained together, the senior commandant shall give the proper notices to the other commandants of regiments at least thirty-five days previous to such training. Notices to battalion and company officers shall be issued and served at the time and in the manner provided by the fourth and fifth sections; and notices to all other officers shall be given by the commandants of regiments at least ten days previous thereto.

Reviews; also of privileges.

1839, p. 20, ch. 23.
1839-40, p. 27, ch.
16, § 5.

§ 15. Each brigadier-general may annually review any of the regiments in his brigade. In February or March of each

repealed by the act of May 1820, (in 3 Story, p. 1786,) which enacts, "that the system of discipline and field exercise which is, and shall be, ordered to be observed by the regular army of the *United States*, in the different corps of infantry, artillery and riflemen, shall also be observed by the militia in the exercises and discipline of the said corps, respectively, throughout the *United States*." See further, post, ch. 29 note, to § 12.

year, he shall give notice to the commandants of said regiments of his intention to review the same, and prescribe the time for said regiments to muster, and the said commandants shall give the proper notices for said musters accordingly.

§ 16. Officers and men, in going to or returning from any muster or court martial, may pass over any bridge or turnpike road, of which the state is sole owner, free of toll. 1844-5, p. 15, ch. 13, § 3.

Music and equipments.

§ 17. The commandants of regiments, of battalions, when battalion are substituted for regimental musters, and of companies, including volunteers, shall employ a drummer and a fife or bugler, to attend their respective musters; and the commandants of regiments shall employ a drummer and a fife to attend the trainings of the officers. 1833-4, p. 40, § 66.

§ 18. The commandant of each regiment may procure for the use of his regiment, and for the drum and fife majors attached thereto, once in ten years if necessary, one drum and fife, upon which he shall cause the name of the county and number of the regiment to be marked. In like manner he may procure one bugle for each company of cavalry or rifle-men attached to his regiment. When any of the said equipments require repairs, the commandant of the regiment may procure the same to be done. Id. p. 46, § 99. 1839-40, p. 27, ch. 16, § 3.

§ 19. The commandants of regiments shall submit all accounts for such equipments or repairs to their respective regimental courts of enquiry, which may make a reasonable allowance therefor. When the court allows for new equipments, it shall also certify that no such equipments have been purchased for the regiment within the preceding ten years. Upon such allowance (with such certificate in the case of new equipments,) the said commandants may draw upon the sheriff of the county or other proper officer for the amount thereof. 1833-4, p. 46, § 99.

Misconduct of officers, men, or bystanders.

§ 20. If any bystander at any muster or meeting of any company or corps, or at any court of enquiry or board of officers, shall interrupt, molest or insult any officer or soldier while on duty, or encroach upon any parade ground, the commanding officer of such company or corps, or such court or board, may cause him to be confined for the day; and the court or board in whose presence, or the regimental court of enquiry (when reported to them,) in whose bounds the offence was committed, may moreover impose a fine for the said offence according to the fourteenth section of the thirtieth chapter. And any person who shall resist any sentry who attempts to keep him or put him out of the limits assigned for any parade, may be arrested by order of the commanding officer and carried before a justice, and may be punished as for a breach of the peace. 1833-4, p. 50, § 116. Vide post, p. 154. ch. 30, § 14.

1833-4, p. 47, § 103.

§ 21. Any officer guilty of disobedience or other misbehaviour, when on duty, or guilty at any time of conduct unbecoming his place, may be put under arrest by his commandant, or may be reported to the proper court of enquiry, and be subject to the penalty incurred by an officer of his rank for failing to perform a duty for which no specific penalty is provided.

Id. p. 47, § 104.

§ 22. If any non-commissioned officer or soldier shall behave disobediently or mutinously when on duty, or before any court of enquiry or board of officers, the commanding officer, court or board, as the case may be, may confine him for the day, and he may moreover be subject to the penalty incurred by a soldier for failing to perform a duty for which no specific penalty is provided.

CHAPTER XXVI.

OF THE CAVALRY AND ARTILLERY, AND THE VOLUNTEER COMPANIES GENERALLY; THEIR UNIFORM, AND THE UNIFORM OF MILITIA OFFICERS.

SEC.

1. } Where volunteer companies to be
2. } enlisted and number of members.
3. Term of enlistment.
4. Who prohibited from joining.
5. How many companies of volunteers to each regiment.
6. Companies authorized by courts to be certified to governor.
7. To what regiments the companies are attached.
8. Company may make and enforce by-laws.
9. How companies may change their name, or change from one kind of force to another.
10. Extra musters of volunteers.

SEC.

11. Who to command when companies parade together.
12. } When volunteers are called into
13. } service.
14. When a volunteer company is dissolved.
15. } to
20. } Of cavalry and artillery.
21. Uniform to be prescribed by the governor.
22. } As to uniform of officers gene-
23. } rally.
24. } As to uniform of volunteer com-
25. } panies.
26. }

Volunteer companies.

1833-4, p. 37, § 42,
46.

Id. p. 38, § 51, 52.

§ 1. Each volunteer company, of whatever description of force, shall consist of not less than forty-five, nor more than eighty men, rank and file, to be raised by volunteer enlistment, within the bounds of the regiment to which they belong, or within the county or city, if there be more than one regiment in the county or city, or within the bounds of two or more adjoining regiments in different counties.

§ 2. Each volunteer company which is armed and uniformed, besides its regular members, may enrol not exceeding fifty contributing members, each of whom, on paying to the treasurer of the company in advance three dollars, shall be exempt from attending the musters or meetings of the company, and from all other military duty for one year, except that he may be drafted or detailed for actual service. Upon such payment by any contributing member, the commandant of the company shall furnish him with a certificate of membership, which shall entitle him to such exemption for one year only.

§ 3. Enlistments into volunteer companies shall be for two years at least. 1833-4, p. 37, 8, 9, § 46, 51, 58.

§ 4. No person except young men arriving at the age of eighteen years, and who shall not have been previously enrolled in any company, shall be permitted to join any volunteer company, after such company shall have performed a tour of duty either in the state or *United States'* service, until twelve months after such company shall have been discharged from such service, unless such person shall have previously performed a like tour of duty. Id. p. 40, § 63.

§ 5. There shall be but one volunteer company of cavalry and one of artillery, and not more than two of light companies of infantry or rifle, as the case may be, to each regiment of infantry of the line. But the regimental courts of enquiry for any regiment may authorize the formation of any additional number of volunteer companies of infantry or rifle, if the companies of the line composing said regiment shall not be thereby diminished in number, or reduced in strength below the minimum required by law. 1833-4, p. 37, § 46; p. 38, § 51.

§ 6. When any volunteer company has been authorized to be raised by a regimental court of enquiry in manner aforesaid, the officer superintending the election of officers for such company shall certify to the governor that such company was authorized to be raised by such court; and thereupon commissions shall issue to the officers.

§ 7. A volunteer company shall be attached to that regiment in the bounds of which the whole or greatest number of the company resides. Id.

§ 8. Every volunteer company may make by-laws and regulations for its own government, which, unless contrary to the laws of this state or of the *United States*, shall be obligatory upon its members. All contributions and dues imposed thereby shall be recoverable before any court or justice having jurisdiction thereof. Id. p. 39, § 60.

§ 9. The governor may authorize any volunteer company to change its name, or to change its description of force, if the regiment to which it belongs, or is attached, has not the complement of companies allowed for each description of force. When such change, as to description of force, is authorized, the commissions held by the officers of said company shall be returned to the executive, and new commissions shall be issued.

§ 10. Besides the regimental or battalion musters, and the two regular company musters prescribed by the first section of chapter twenty-fifth, there shall be two other musters of each volunteer company every year. The commandant of each volunteer company shall appoint the time and place for said additional musters, and notify the commandant of the regiment thereof; and if he fail to do so, he shall be reported by the commandant to the regimental court of enquiry. 1833-4, p. 35, § 33; p. 39, § 59. 1835-6, p. 15, § 6. Ante, p. 132, ch. 25, § 1.

§ 11. When volunteer companies parade, join, or do duty

together, the senior officer present shall command without regard to corps.

1833-4, p. 38, § 49;
p. 39, § 61.

§ 12. Whenever volunteers are ordered into service, they shall be called out by companies unless a smaller number shall be deemed sufficient to perform the duty.

Id. p. 39, § 58.

§ 13. In volunteer companies substitutes shall not be allowed, except when authorized by the company to which the member offering a substitute belongs.

Id. p. 39, § 57.

§ 14. When any volunteer company shall, for twelve months together, be reduced in strength below the minimum number required by law, or for the same time shall be without the requisite uniform, it shall be dissolved, and its members shall then be enrolled in the respective companies of the line in the districts of which they reside. In every case of such dissolution, it shall be the duty of the commandant of the regiment in which the same occurs, to report the said dissolution to the executive without delay.

Of cavalry and artillery.

1833-4, p. 37, § 43.

§ 15. The cavalry and artillery shall be armed, equipped, instructed and manœuvred according to the regulations prescribed for such corps in the army of the *United States*.

Id. p. 37, § 47.

§ 16. Each company of artillery, equipped with ordnance, shall be allowed horses to draw its artillery and caissons, at every muster required by law.

Id. p. 37, § 43.

§ 17. The governor may require any company of artillery to perform the duties of light artillery.

Id. p. 37, § 45.

§ 18. Field officers of cavalry and artillery shall be attached to the regiments of infantry in the bounds of which they may reside.

Id. p. 37, § 48.

§ 19. Each company of cavalry or artillery shall parade with the regiment to which it is attached, and with such battalion as the regimental court of enquiry shall direct.

1843-4, p. 21, ch.
24, § 1.

§ 20. Any two or more companies of cavalry, may muster or drill together for three successive days, in any year, at such time before the annual training of the officers, and at such places, as may be designated by a majority of those composing such companies. The senior officer present each day shall command and conduct the drill. The officers of the companies so training shall be exempt, for the year in which such muster or drill is held, from attending the general training of the officers of the regiment to which such companies are attached.

Uniform.

1833-4, p. 38, § 50,
55; p. 58, § 164.

§ 21. The governor may declare, by proclamation, what shall be the uniform of the militia, and the several officers shall be governed accordingly. Each description of force shall have a distinctive uniform. Companies uniformed at the time of the governor's proclamation shall not be compelled to make any change.

Id. p. 36, § 39.

§ 22. All officers when on duty shall appear in full uniform, with side arms.

§ 23. No officer of the militia shall be fined for not appearing in uniform until six months after he shall have been commissioned.

§ 24. The governor may, upon the recommendation of the commandant of the regiment, authorize volunteer companies to change or depart from the uniform prescribed; but in every such case, some uniform, suitable to the description of force to which the company belongs, shall be substituted. 1833-4, p. 38, § 50, 55; 1841-2, p. 19, § 8.

§ 25. Whenever the governor shall be satisfied that any volunteer company authorized by this act has been enlisted and organized, and that the officers thereof have been elected in the manner prescribed by law, he shall issue commissions for the same. But the persons so enlisted and organized shall be kept enrolled, and required to perform militia duty in their respective company districts, until the minimum number of such volunteer company shall be fully uniformed, according to law.

§ 26. All persons who shall not, within six months from the time of their enlistment in such volunteer company, provide themselves with the prescribed uniform, shall be stricken from the roll of said company.

CHAPTER XXVII.

ORDNANCE AND ARMS; ACCOUTREMENTS, CAMP EQUIPAGE AND HOUSES FOR CANNON; AND AMMUNITION.*

SEC.

1. Power to arm.
2. What kind of arms and what number of cannon are furnished.
3. Conditions on which arms may be issued.
4. When conditions dispensed with.
5. How surety for preservation of arms may obtain counter security.
6. How arms may be exchanged.
7. How arms are to be kept.
8. Inspection of arms.
9. How arms are collected and repaired.

SEC.

10. Arms not worth repairing, to be sold.
11. Persons removing or discharged, to return arms.
12. How a person may be exonerated from penalties.
13. Prices chargeable for public arms destroyed.
14. Process to recover embezzled arms.
15. } Accountments, camp equipage
18. } to and houses for cannon.
19. Powder, balls and shells to be procured.

Ordinance and arms.

§ 1. The governor may arm such portions of the militia of the line as he may deem expedient. He may also issue to any company of cavalry, infantry, light infantry or rifle, the necessary arms and accoutrements; and to any company of artillery, suitable cannon, properly mounted, with the necessary caissons, harness and other equipments. In all cases, before arms or cannon shall issue to volunteer companies, they shall produce the certificate of the commandant of the regi- 1833-4, p. 36, § 40; p. 39, § 61. 1834-5, p. 22, ch. 21, § 5, 6. 1841-2, p. 20, ch. 22, § 1.

* Acts of congress in relation to arms and accoutrements of militia, in 1 Story's Laws U. S. p. 252, 3, 4, § 1, 4; p. 521; 2 Story p. 888, 1093; 3 Story p. 1597.

ment to which they belong or are attached, that they are provided with uniform according to law.

1836-7, p. 21, ch.
23, § 4.
1840-41, p. 56, ch.
29, § 5.
1841-2, p. 20, ch.
22, § 2.

§ 2. In issuing arms, those that have been repaired shall be first issued, until exhausted, unless to companies to which new arms have been furnished, and then such issue may be of arms corresponding with those in the hands of such companies. In time of peace, no company of artillery shall be furnished with more than two pieces of cannon, except the companies of artillery in the cities of *Richmond* and *Norfolk*, and the towns of *Petersburg*, *Fredericksburg*, *Portsmouth*, *Wheeling*, *Alexandria*, *Lynchburg* and *Winchester*, to each of which four pieces may be furnished.

1841-2, p. 20, ch.
22, § 4.

§ 3. Whenever the superintendent of either of the public arsenals shall receive an order from the governor for the issue of arms, accoutrements or equipments for any company whatever, he shall require of the commandant of said company duplicate bonds, with sufficient surety, in a penalty equal to double the value thereof, payable to the commonwealth, with a condition that he shall not deliver the same to any member of his company, until such member shall execute bond, with surety, for the preservation and return thereof when demanded, one of which bonds shall be delivered to the adjutant-general and the other retained by said superintendent; and the commandant of any such company receiving arms and accoutrements, before delivering the same to any member of his company, shall cause him to execute bond with surety as aforesaid, in a penalty equal to double their value, payable in like manner, and conditioned for the preservation and return thereof, when demanded. The bonds last mentioned shall be filed with the clerk of the regimental court of enquiry to which said company belongs or is attached.

§ 4. In case of public emergency, the governor may, by order in writing, dispense with any or all of the bonds hereby required.

1839, p. 21, ch. 24,
§ 3.

§ 5. In any case of a bond executed for arms and accoutrements, upon a certified copy of such bond, any surety therein may petition the court of the county or corporation where his principal resides, and such court may make a rule against the principal, to show cause why counter security shall not be given, or the arms and accoutrements returned. Upon the service of such rule, at least ten days before the return day thereof, the court may order such principal to give counter security, or to return such arms and accoutrements to the commandant of the regiment to which he belongs or is attached, who shall receive the same upon their being so returned. The clerk of the court shall forthwith transmit to the adjutant-general a certified copy of the order of court.

§ 6. The governor may authorize any company, having in its possession arms or accoutrements, or cannon and equipments unfit for service, or not suitable to the description of force to which such company belongs, to exchange the same;

and when returned to such arsenal as he may direct, he may require the superintendent thereof to issue to such company the requisite number and description of arms and accoutrements, or cannon and equipments, under the regulations and restrictions provided for an original issue.

§ 7. Every person having in possession any public arms or accoutrements, shall keep the same in good and serviceable order, and whenever called on duty, shall appear with such arms. The governor may prescribe the mode of keeping and preserving the same. 1833-4, p. 47, § 105.

§ 8. The commandants of regiments, battalions and companies, at their respective musters, shall inspect the public arms and accoutrements in possession of the militia, including volunteers; and if it shall appear to them that any such arms or accoutrements are not in proper condition, they shall report the same as other delinquencies. Id. p. 48, § 110.

§ 9. The adjutant-general shall, from time to time, cause to be collected and transmitted to the most convenient arsenal, all public arms and accoutrements, cannon and equipments, not in use for the militia or volunteer service, and in his judgment worth the probable cost of transportation and repair; and to this end, he shall issue orders to the commandants of regiments, who shall require the adjutants or quarter-masters of their regiments to collect and return the same. And the governor shall allow a reasonable compensation therefor, including the cost of transportation. 1841-2, p. 20, 21, ch. 22, § 7.

§ 10. When any arms or accoutrements, in the public arsenals, are found to be unfit for repair, the governor may authorize the same to be sold, under such regulations as he may prescribe, but all arms condemned as unsafe, before they are offered for sale, shall be unbreeched and broken, so as to prevent their use as fire-arms or weapons.

§ 11. Every person possessed of public arms or accoutrements, who shall be about to remove from his company district, or who shall not be liable to military duty, and the personal representative of every person who at the time of his death was so possessed, shall deliver the same in good order to the commandant of the company of which such person was a member, or if there be no officer of said company, to the commandant of the regiment, or other person authorized to receive them; and such officer or person shall give an order upon the clerk of the court of enquiry of his regiment for the bond, if any, executed when such arms and accoutrements were issued, and the clerk shall deliver up such bond accordingly. If any one shall fail to deliver up said arms and accoutrements as aforesaid, or when lawfully required, they may be recovered by the person authorized to receive them, by legal process. 1833-4, p. 47, § 106.

§ 12. In case any arms or accoutrements issued in conformity to law shall be injured, lost or destroyed without

default on the part of the person having the rightful custody of the same, the regimental court of enquiry having cognizance thereof, if satisfied of the fact, shall enter the same of record, and a certificate thereof shall exonerate such person from any penalty to which he would otherwise be liable.

1833-4, p. 48,
§ 108.

§ 13. Every person accountable for public arms or accoutrements, shall make satisfaction to the commonwealth therefor, to be awarded by the regimental court of enquiry, at the prices fixed in the bond executed at the time of issuing the same, or if no bond was given, at the following prices: For a musket fifteen dollars; for a ramrod one dollar; for a bayonet two dollars; for a pistol five dollars; for a sword ten dollars; for a pair of holsters five dollars; for a rifle twenty dollars; and for any other arms or accoutrements, or parts thereof, such prices as may be determined on by said court.

Id. p. 48, § 110.

§ 14. If any commandant of a company shall have reason to believe that any member of his company has embezzled, or unlawfully disposed of his arms or accoutrements, or has removed out of the bounds of his company without returning them, or has failed to return them when lawfully demanded, he shall proceed by legal process, in the name of the commonwealth, to regain possession thereof.

Accoutrements, &c., and houses for cannon.

1834-5, p. 22, ch.
21, § 6.

§ 15. The governor may cause to be erected suitable houses or shelters for the preservation and safe keeping of cannon and caissons, harness and other equipments, and from time to time, cause said houses or shelters, and said cannon, caissons, harness and equipments, to be properly repaired, or the said houses and shelters removed and re-erected.

Id. p. 22, ch. 21,
§ 5.

§ 16. The governor may furnish any company of volunteers going into an encampment for military exercise, with suitable tents and camp equipage, under such regulations and restrictions as he may impose. When any accoutrements, tents and camp equipage, authorized to be furnished, are not provided in the public arsenals, or are insufficient or not suitable, the governor shall have authority to purchase the same.

Id. p. 22, ch. 21,
§ 5, 6.

§ 17. All expenditures incurred by the governor in arming and accoutreing companies as aforesaid, and in erecting, removing and repairing buildings, or repairing equipments, shall be paid out of any money in the treasury not otherwise appropriated.

Id. p. 21, ch. 20,
§ 3.

§ 18. The governor may order boxes for packing arms, mountings for cannon, and accoutrements or equipments, and repairs thereto, to be made or done at the penitentiary, when the said work can be executed there.

§ 19. The governor may, from time to time, procure such a supply of powder, cannon balls and shells, as the public service may require.

to which his regiment belongs. He shall note in his report and return the failure of any commandant of a company to make the return required of him, and whether the information which such return should have afforded has been supplied by his adjutant, and whether he has reported any officers to the court of enquiry for neglect or failure in the performance of any duty. He shall moreover embrace in such return a statement, of any arms that may have been collected by his order, or any arms that may have been returned to him, by any person or by order of any court. He shall keep a book in which he shall enter and preserve a copy of his regimental return.

1833-4, p. 41, § 69.
1839, p. 20, ch. 23.
1839-40, p. 27, ch.
16, § 5.
1841-2, p. 18, ch.
21, § 1.

§ 4. Each brigadier-general, on or before the first day of July annually, shall consolidate the returns from the several commandants of regiments, and make to the adjutant-general a return of the strength and condition of his brigade, specifying all the particulars required to be specified in the returns of commandants of companies, and distinguishing the strength and condition of each regiment. If any commandant of a regiment shall have failed to make his return, the said brigadier-general shall include in his own return the regiment omitted, estimating its strength at the number reported in the last return from such regiment. He shall note the failure of every commandant of a regiment to make his return, and state whether he has reported, to the proper court of enquiry, such officer for such failure. He shall furthermore report what regiments he has reviewed. He shall keep a book in which he shall enter and preserve a copy of his brigade return.

1833-4, p. 29, § 4.

§ 5. The adjutant-general shall consolidate the returns from the several brigadier-generals, the superintendent of the Virginia military institute, and the commandant of the public guard, and, on or before the first Monday in November, annually, shall make to the governor a return of the strength and condition of the militia of the state, stating the strength of the several descriptions of force, and of the ordnance, ordnance stores, arms, accoutrements, equipments and ammunition belonging to the state, specifying those in the hands of the militia, and those at the several state arsenals and magazines. He shall specially return the regiments which, for the two preceding years, have been less in strength than four hundred men, rank and file.

2 R. C. p. 326, § 2.
1833-4, p. 41, §
70, 71.
Army regula-
tions, p. 145.

§ 6. The forms of the several returns shall be prescribed by the adjutant-general, and shall be furnished by him to the commandants of brigades and regiments whenever necessary. The commandants of regiments shall furnish their adjutants with the forms for regimental returns, and the commandants of companies with the forms of company returns. The adjutant-general shall cause the said forms to be printed by the public printer, and to be forwarded to the several officers by mail. The said returns shall be according to the forms so prescribed and furnished.

Reports of delinquents.

§ 7. Every officer ordering a company to meet for the election of officers, shall report to the battalion court of enquiry to which such company belongs, or is attached, every member thereof who shall fail to meet for such election, or who shall, when assembled, fail to vote for officers. 1830-31, p. 121, ch. 51, § 13.

§ 8. Every commandant of a regiment shall report to his next regimental court of enquiry every person who shall have been a candidate for any office to which he shall be elected, and who shall fail to accept the same and qualify within the time prescribed. 1839, p. 19, ch. 21, § 1.

§ 9. The commandant of every company shall report to the next court of enquiry, of the battalion to which his company belongs or is attached, all delinquents at any of the musters or meetings, required by law, of such company since his last report, and all delinquent in keeping in proper condition any public ordnance, arms, accoutrements and equipments. 1833-4, p. 39, § 36, 59.

§ 10. Whenever the commandant of a company shall fail to make his report to the battalion court of enquiry, the regimental court of enquiry may receive the same and act thereon. 1839, p. 20, ch. 21, § 2.

§ 11. When two or more companies of cavalry train together, and are thereby exempt from attending the trainings of the officers of the regiments to which such companies are attached, the commandant of each company, in addition to his report to the battalion court of enquiry, shall report to his regimental court of enquiry all officers who are delinquent in any manner at such training. 1843-4, p. 21, ch. 24.

§ 12. The commandant of a company who shall not report any member thereof delinquent, shall not be exempt from the penalties for failing to report delinquents, unless he shall report in writing that no delinquencies occurred in his company during the year. 1842-3, p. 23, ch. 21, § 8.

§ 13. Every adjutant or officer required to muster a company without officers, shall report to his battalion court of enquiry, all delinquent at any muster or meeting of such company while it was under his command, or when the company roll shall have been called by him by order of a superior officer. 1833-4, p. 36, § 37-1839-40, p. 26, 27, ch. 16, § 1.

§ 14. Adjutants to whom returns are required to be made by commandants of companies, shall report to the commandants of their regiments every officer failing to make the same, or to make it in the form prescribed.

§ 15. The commandant of every battalion, when battalion shall have been substituted for regimental musters, shall report to the court of enquiry of his regiment all officers delinquent at said musters, and at any court or board at which he may preside. 1833-4, p. 36, § 36.

§ 16. The commandant of every battalion shall report in writing to the brigadier-general of his brigade the commandant of his regiment for failing to attend any battalion muster, or for any neglect or breach of duty known to him. Id. p. 49, § 112.

1833-4, p. 36, § 36;
p. 40, § 65; p. 42,
§ 74, 78.
1839, p. 21, ch.
24, § 1, 2.
1842-3, p. 23, ch.
21, § 3.

§ 17. The commandant of every regiment of the line shall annually report to his regimental court of enquiry all commandants of companies who have been reported to him by his adjutant; the adjutant who fails to make his return as required; all field or staff officers delinquent at the regimental musters, or battalion musters substituted therefor; and all officers and others required to attend the trainings of the officers, or trainings of any special regiment, or to attend any board of officers or court of enquiry, who may have been delinquent; and all other delinquencies known to him.

1833-4, p. 41, § 72.

§ 18. The commandant of every regiment shall report to his said regimental court all delinquent in keeping in proper condition public ordnance, arms, accoutrements or equipments, whether brought to muster or in their custody.

1839, p. 20, ch. 23.
1839-40, p. 27, ch.
16.

§ 19. Every commandant of a regiment shall report to the adjutant-general, his brigadier-general, for any neglect or breach of duty known to him.

1833-4, p. 49, §
112.
1839-40, p. 27, ch.
16, § 5.

§ 20. Each brigadier-general shall annually report all commandants of regiments within his brigade, who fail to make to him the annual return required of such commandants, or fail to make it in the manner required, or fail to execute orders for reviews of regiments, or who are in any respect delinquent at such reviews, or guilty of any other neglect or breach of duty known to him, or reported to him by any officer authorized to make such report.

Id.

§ 21. The brigadier-general shall make said report to the next regimental court of enquiry for some regiment, to be selected by him, adjoining that commanded by the officer reported, giving reasonable notice thereof to such officer.

1833-4, p. 49,
§ 112.

§ 22. Each brigadier-general shall report his brigade inspector, aid de camp, or brigade quartermaster, for any neglect or breach of duty, to the court of enquiry for the regiment in the bounds of which such officer resides, giving reasonable notice thereof to such officer.

Id.

§ 23. Each brigadier-general shall report, to the adjutant-general, the major-general of his division, for any neglect or breach of duty known to him; he may also report, to the governor, the adjutant-general for like neglect or breach of duty.

Id. p. 48, 9, § 111.

§ 24. Each major-general shall report, to the adjutant-general, any brigadier-general within his division, for any neglect or breach of duty known to him. He shall also report his division inspector, aids de camp, and division quartermaster, each, for any neglect or breach of duty, to the court of enquiry for the regiment in the bounds of which such officer resides, giving to said officer reasonable notice thereof. He may also report, to the governor, the adjutant-general, for any neglect or breach of duty known to him.

1841-2, p. 18, ch.
21, § 1.

§ 25. The adjutant-general shall annually report, to the governor, every major-general who shall fail to perform any duty, and every brigadier-general who shall have failed to make the return required of him, at the time and in the form

prescribed, and who shall have failed to perform any other duty imposed upon him, reporting specially each neglect or failure of duty. At the time of making such report, the adjutant-general shall notify the officer reported, thereof.

§ 26. The adjutant-general shall report to the court of enquiry for the regiments in which they reside, all quartermasters for failing to perform any duty required in the quartermaster's department, under his orders or instructions. 1833-4, p. 33, § 24.

§ 27. The first auditor, and every sheriff or collector, shall annually report to the commandants of regiments, all clerks of courts of enquiry who fail to perform any duty required of them, within the cognizance of said auditor, sheriff or collector, respectively, and said commandants shall lay the same before their regimental courts of enquiry.

§ 28. Each officer shall annex to all reports required to be made by him to courts of enquiry, the following certificate: 1833-4, p. 36, § 36.
I certify that the foregoing contains all the delinquencies which have occurred since my last report.

CHAPTER XXIX.

WHEN THE MILITIA IS CALLED INTO ACTUAL SERVICE.*

SEC.

1. How militia is called out on sudden emergency.
2. How officers for detachments are detailed.
3. } How men are drafted.
4. }
5. How mustered into service.
6. Of substitutes.
7. } Of deserters.
8. }
9. Furloughs.

SEC.

10. Exemption from civil process.
11. } Term of service; and discipline.
12. }
13. Pay in actual service.
14. } Camp equipage and rations.
15. }
16. Colours.
17. } Ammunition.
18. }
19. Custody of camp equipage, and other property.

In addition to the provisions in the second, third, fourth and fifth sections of chapter seventeen for the case of the militia, or any part of it, being called forth into actual service by the governor, it is declared as follows: Ante, p. 103, § 2, 3, 4, 5.

How militia is called out on sudden emergency.

§ 1. If a sudden invasion or insurrection shall happen in any county or corporation, or imminent danger thereof be apprehended, the commandant of any regiment therein shall order out a part, or the whole of the militia under his com- 1833-4, p. 53, § 132, 3.

* In 1 Story's Laws U. S. p. 389, act of congress of the 28th of February, 1795, to provide for calling forth the militia to execute the laws of the Union, suppress insurrections and repel invasions; act of April 18, 1814, in addition thereto in 2 Story, p. 1424; as to their pay when so called forth, see 2 Story 374, 380 and 3 Story 1690.

mand, to repel, suppress or prevent the same, and, if necessary, shall call on the commandants of adjacent regiments, who shall forthwith in like manner furnish the additional force that may be necessary. In any such case, the officer making such order and requisition shall immediately report to the governor the number and description of the force which is called out, and the cause thereof.

How officers are detailed and men drafted.

1833-4, p. 53,
§ 130.

§ 2. When any detachment shall be called into service from any division, brigade or regiment, the officers to command such detachment shall be detailed from the division, brigade or regiment, from which such detachment shall be ordered. If a volunteer force is accepted from different parts of the state, the companies accepted shall be under the command of their respective officers, but the governor shall detail or appoint the necessary field officers therefor. When a brigadier's or major-general's command is called out, the governor shall order one of the brigadiers or major-generals of the state to command the same.

Id. p. 47, § 102.

§ 3. When drafts shall be ordered for actual service, every commandant of a company of militia of the line, shall forthwith divide his company by ballot into divisions from one to ten, for regular routine of duty, and he shall, within fifteen days after such division, return a roster of each division, and its number in rotation, to the commandant of the regiment to which he belongs, who shall direct the same to be recorded by the clerk of the regimental court of enquiry. On the subsequent enrolment of any person into such company, the same regulations shall be observed, unless he shall produce a certificate of his having been before drawn for the same purpose, in which case he shall be enrolled accordingly. Every person removing from the bounds of one company into another shall apply to the commandant of the company to which he belonged, who shall give him a discharge, certifying the class wherein he was arranged, and whether he had performed his tour of duty or not, and the time and date of service; which certificate such person shall produce, within ten days after his removal, to the commandant of the company into whose bounds he shall have removed; and such officer is required to enrol him in the numerical class specified in the certificate, or upon his failure to produce such certificate, such person shall be enrolled in the class destined to perform the next tour of duty.

Id. p. 52, § 124.

§ 4. Where a draft for a tour of duty shall be made from any company, and any person drafted, from any cause shall fail to march when ordered, the deficiency thereby created shall be supplied, from the class or company from which the draft was taken.

How the men are mustered into service.

§ 5. Whenever a requisition is made for troops, the officer upon whom the requisition is made shall direct an officer to muster and inspect the men, who, together with a surgeon detailed from some convenient regiment, shall examine into the fitness of the persons detailed for service. He shall also at the time of such detail, or as soon thereafter as practicable, summon a board to assemble, consisting of three commandants of companies, who shall constitute a court of enquiry to hear and decide all questions in relation to the mustering of such men into service. Said board shall appoint a clerk and provost marshal, who shall receive the same compensation for their services as are allowed by law to the same officers of regimental courts of enquiry.

1833-4 p. 51,
§ 121.

Of substitutes.

§ 6. Any person, other than a volunteer, who shall be detailed or drafted for duty, may furnish, at any time before he is mustered into service, an able-bodied man, well clothed, who, if received by the proper mustering officer, shall act as his substitute; but the person furnishing such substitute shall perform ordinary militia duty during the substitute's absence. If such substitute, while engaged for another, shall be called on to perform his own tour of duty, the person furnishing him shall be required to take his place, or to furnish another substitute, or be liable as provided in the thirteenth section of the thirtieth chapter.

Id. p. 52, § 126.

Post. ch. 30, § 13.

Of deserters.

§ 7. No person shall absent himself from his regiment, after the commandant thereof has received an order requiring a detail or draft to be made, and of which such person shall have been in any way informed, until such detail or draft shall have been made. Every person so offending, who shall be subsequently detailed to march, unless he join the detachment with which he is detailed, at its place of rendezvous, or shew that he was prevented from so joining by unavoidable cause, shall be considered and treated as a deserter.

Id. p. 51, § 122, 3.

§ 8. If any person shall fail to appear at the place of rendezvous when ordered, or shall absent himself without leave, the commandant of the detachment, or of the regiment to which he belongs, may order as many men as may be necessary to apprehend and deliver him to his proper officer, and such person, without justifiable excuse, shall be treated as a deserter.

Id. p. 52, § 125.

Furloughs.

§ 9. The governor may grant a furlough to any officer in service, for such time as to him shall seem reasonable. Fur-

loughs may also be granted by a major-general to any officer of his division, for a time not exceeding four months in any one year; by a brigadier-general to any officer of his brigade, for a time not exceeding two months in any one year; by a colonel to any officer in his regiment, for a time not exceeding one month in any one year.

Exemption from civil process.

1833-4, p. 55,
§ 141, 2, 3, 5.

§ 10. No proceeding shall be had in any suit at law or equity, or on any execution against the person or property of any one ordered into actual service, (whether of this state or of the *United States*,) or against his surety, from the time such person shall be ordered to the place of rendezvous, until thirty days after his term of service shall have expired. This exemption shall not apply to any person who shall have received the money of another in a fiduciary character, nor as an officer of the commonwealth or of any court, nor to any of his sureties, nor to any person who shall have employed a substitute to perform his tour of duty; nor shall it prevent the granting or reinstating of any injunction.

Term of service; and discipline.

Id. p. 53, § 131; p.
54, § 139.

§ 11. The militia when called into service, by state authority, shall serve for six months after their arrival at the place of rendezvous, unless sooner discharged. But the governor shall, at all times, have power to retain them in service for such time as the militia in the service of the *United States* may be retained by authority of congress.

Id. p. 54, § 139.

§ 12. When any militia shall be called into actual service, they shall be governed by the articles of war, which may be in force at the time, for the government of the troops of the *United States*.*

Pay in actual service.

Id. p. 31, § 11, 12;
p. 37, § 43; p.
54, 5, § 139, 40.

§ 13. All officers and soldiers, when called into the actual service of the state, shall be entitled to the same camp equipage, pay, subsistence, forage and other emoluments to which

* The act of congress of the 10th of April 1806, establishing rules and articles for the government of the armies of the *United States*, provides, in article 97, (2 Story's Laws U. S., p. 1005,) that "the officers and soldiers of any troops, whether militia or others, being mustered and in pay of the *United States*, shall, at all times, and in all places, when joined or acting in conjunction with the regular forces of the *United States*, be governed by these rules and articles of war, and shall be subject to be tried by courts martial, in like manner with the officers and soldiers in the regular forces, save only that such courts martial shall be composed entirely of militia officers;" and in article 98, that "all officers serving by commission from the authority of any particular state, shall, on all detachments, courts martial, or other duty, wherein they may be employed in conjunction with the regular forces of the *United States*, take rank next after all officers of the like grade in said regular forces, notwithstanding the commissions of such militia or state officers may be older than the commissions of the officers of the regular forces of the *United States*."

The act of congress of the 2d of March 1821, (3 Story, p. 1811,) declares that the system of "general regulations for the army," compiled by Major-general Scott, is approved and adopted for the government of the army of the *United States*, and of the militia when in the service of the *United States*.

similar officers and soldiers are entitled in the service of the *United States*. And whenever disbanded, they shall be allowed to draw money in lieu of the rations to which they may be entitled, to be commuted at the contract price when practicable, and when not, to be regulated by the quartermaster-general.

Camp equipage and rations.

§ 14. The governor shall cause to be furnished to every corps or detachment called into service the proper camp equipage and rations; and if the same be not in the public arsenals, may purchase the articles necessary or cause them to be impressed; and where any corps shall be called out on any emergency by any officer authorized to make such call, such officer shall have like authority, until furnished by the governor as herein required. 1 R. C. p. 134, § 4. 1833-4, p. 53, 4, § 134, 138.

§ 15. Whenever detachments shall be ordered into service for a period not exceeding twenty days, the officer ordering the same may authorize the commandant of such detachment, in lieu of camp equipage and of rations, to provide provisions and other accommodations for such detachment, the actual cost of which shall be defrayed out of the compensation to which the officers and men composing such detachment may be entitled by law; and in such cases each officer shall receive, in addition to his usual pay, seventy-five cents per day, and each non-commissioned officer and private, fifty cents per day. 1839, p. 20, ch 22.

Colours and ammunition.

§ 16. Whenever any regiment is called into actual service, the governor may order therefor a stand of colours, and not otherwise. 1839-40, p. 27, ch. 16. § 2.

§ 17. The governor shall cause to be furnished to the troops, in actual service under state authority, an ample supply of ammunition and other munitions of war.

§ 18. Any officer authorized to call forth troops for actual service, may provide such supply of ammunition, (by purchase or impressment,) as may be necessary, until regularly supplied by competent authority.

Custody of camp equipage, supplies and other property.

§ 19. All camp equipage, supplies and other public property for the use of any corps in service, shall be in charge of the commandant thereof; and when said corps is discharged, he shall deliver the same to the officer authorized to receive it, taking his receipt. He shall account to the regimental court of enquiry next succeeding the expiration of his tour of duty for the said articles, and, if any portion thereof shall have been lost by his misconduct or neglect, shall be liable for the value, to be assessed by said court. 1833-4, p. 54, § 135, 6, 7.

CHAPTER XXX.

WHAT FINES AND PENALTIES ARE INCURRED FOR DELINQUENCIES; HOW THEY ARE ASSESSED AND COLLECTED; THE ALLOWANCES OUT OF THE SAME; AND THE DUTIES AND LIABILITIES OF THE COLLECTOR.

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The following fines and penalties shall be incurred for delinquencies, viz :

Fines on commandants of divisions and brigades; and adjutant-general.

1833-4, p. 49,
§ 113.

§ 1. By a commandant of a division for failing to order into service any militia lawfully called for, a sum not less than one hundred nor more than five hundred dollars, and for failing to perform any other duty required by law, not less than fifty nor more than three hundred dollars.

Id.

§ 2. By a commandant of a brigade for failing to order into service, when it is his duty to do so, any militia legally called for, not less than seventy-five nor more than four hundred dollars, and for failing to perform any other duty required by law, not less than ten nor more than two hundred dollars.

Id. p. 50.

§ 3. By the adjutant-general for failing to perform any duty required by law, not less than forty nor more than two hundred dollars.

Commandants of regiments and battalions ; and staff officers ranking with them.

§ 4. By a commandant of a regiment for failing to order ^{1833-4, p. 49.} into service, when it is his duty to do so, any militia lawfully called for, or required, or failing to appear when he ought at any rendezvous, not less than fifty nor more than three hundred dollars ; for failing to make his regimental return, not less than ten nor more than fifty dollars ; and for failing to attend any muster, or perform any other duty required by law, not less than five nor more than one hundred dollars.

§ 5. By a commandant of a battalion for failing to order ^{Id p. 50.} into service, when it is his duty to do so, any militia lawfully called for or required, or for failing to appear when he ought at any rendezvous, not less than twenty-five nor more than two hundred dollars ; and for failing to attend any muster, or perform any other duty required by law, not less than three nor more than fifty dollars.

§ 6. By a division inspector, aid de camp to a major-general, division quartermaster and brigade inspector, for failing to appear at any rendezvous for service when lawfully called on to do so, not less than twenty-five nor more than two hundred dollars ; and for failing to attend any muster or perform any other duty required by law, not less than three nor more than fifty dollars.

Commandants of companies, and staff officers ranking with them.

§ 7. By a commandant of a company for failing to order ^{Id.} into service his company when lawfully called for or required, or for failing to appear when he ought at any rendezvous, not less than twenty nor more than two hundred dollars ; for failing to make his company return, not less than five nor more than fifteen dollars ; and for failing to attend any muster or perform any duty required by law, not less than three nor more than twenty dollars.

§ 8. By any staff officer assimilated in rank to commandants of companies, for failing to appear at any rendezvous for service, when lawfully ordered to do so, not less than twenty nor more than one hundred dollars ; and for failing to attend any muster or perform any other duty required by law, not less than three nor more than twenty dollars.

Subalterns.

§ 9. By a subaltern officer, for failing to appear at any rendezvous when lawfully ordered to do so, not less than fifteen nor more than seventy-five dollars ; and for failing to attend any muster or perform any other duty required by law, not less than two nor more than ten dollars. ^{1833-4, p. 50, § 113.}

Adjutants, and regimental staff.

1839, p. 21, ch. 24,
§ 2.
1840-41, p. 55, ch.
29, § 2.

§ 10. By an adjutant, for failing to make to the commandant of his regiment the return required by law, a forfeiture of the allowance to which he would otherwise be entitled for his services, and a fine of not less than ten nor more than twenty dollars.

1833-4, p. 50,
§ 113.

§ 11. By any regimental staff officer, including adjutants, for failing to appear at any rendezvous when lawfully ordered to do so, not less than fifteen nor more than seventy-five dollars; and for failing to attend any muster or perform any other duty required by law, not less than two nor more than ten dollars.

Officers refusing to qualify to commissions.

1839, p. 19, ch. 21,
§ 1.

§ 12. By any officer who shall have been a candidate for an office, and shall have been elected and commissioned, and failed to accept the same and qualify thereto, if a general officer, not less than fifty nor more than one hundred dollars; if a field officer, not less than twenty nor more than fifty dollars; if a captain, not less than fifteen nor more than thirty dollars, and if a subaltern, not less than ten nor more than twenty dollars.

Non-commissioned officers and soldiers.

1833-4, p. 50,
§ 113.
1835-6, p. 15, ch.
13, § 7.
1841-2, p. 19, ch.
21, § 9.
1845-6, p. 22, § 2.

§ 13. By a non-commissioned officer or soldier, for failing to appear at rendezvous when lawfully ordered to do so, not less than ten nor more than fifty dollars, besides being enrolled in the class destined to perform the next tour of duty; for failing at any muster to go into the ranks when required, or to execute any order given, not having a reasonable excuse, not less than five nor more than ten dollars; for failing to attend any muster authorized by law, fifty cents; and for failing to perform any other duty required by law, not less than fifty cents nor more than two dollars.

Bystanders.

1833-4, p. 50,
§ 116.

§ 14. By any bystander at a muster or meeting of any company or corps, or at any military court or board, who shall interrupt, molest or insult any officer or soldier while on duty, or encroach upon any parade ground, not less than two nor more than ten dollars.

Clerks of courts of enquiry.

1842-3 p. 23, ch.
21, § 7.

§ 15. By a clerk of a court of enquiry, for failing to place in the hands of the sheriff or collector, or failing to take from him a receipt for, the tickets for fines assessed by his court,

and by the governor, when certified by the secretary of the commonwealth; for failing to transmit tickets against non-resident delinquents to the clerks of other courts; or for failing to make any return to the first auditor as required by law;—not less than twenty nor more than fifty dollars: for unlawfully making out duplicates of claims allowed by his court, one hundred dollars; and for failing to perform any other duty required by law, not less than five nor more than twenty dollars. And if any clerk, after having been reported by the first auditor to the court of enquiry for any negligence or failure, shall still fail to make any return required of him, he shall forfeit for every such failure one hundred dollars, recoverable, on motion of the first auditor, in the general court, upon reasonable notice.

Officer or soldiers for neglect of duty in relation to arms, &c.

§ 16. If any person shall fail to keep in good and service-able order any public ordnance, ordnance stores, arms, accoutrements, equipments or ammunition in his possession or custody, or shall fail to appear with the same when called on duty, he shall be fined, if an officer, for each offence, not less than five nor more than fifty dollars, and if a non-commissioned officer or soldier, not less than two nor more than five dollars. And any officer or soldier who shall remove out of the limits of his company district, without delivering such property, as directed by law, to the officer entitled to receive the same, shall be fined not less than five nor more than twenty dollars. 1833-4, p. 48,
§ 107.

Who pays fines on minors.

§ 17. The fines and penalties incurred by any minor or apprentice in the militia, shall be paid by his parent, guardian or master. Id. p. 51, § 117.

How fines are assessed or suspended, and how tickets therefor are made out.

§ 18. All fines and forfeitures imposed on the militia, unless otherwise provided for by law, shall be assessed, if the delinquent be an officer, (other than a general officer,) by the regimental court of enquiry, or if he be a non-commissioned officer or soldier, by the battalion court of enquiry to which he shall have been reported. Id. p. 50, § 115.

§ 19. Whenever any major-general, brigadier-general, or the adjutant-general, shall be reported for delinquency, or shall fail to make any report or perform any duty required of him by law, the governor, after having given reasonable notice of the complaint against or default charged on him, and after considering any excuse or defence which may be offered by

said officer, may assess such fine or impose such penalty as is prescribed by law for the delinquency.

§ 20. When any fine is imposed by the governor, the secretary of the commonwealth shall certify the same to the first auditor, and to the clerk of the court of enquiry for the regiment in the bounds of which such general resides, paying postage on his letters.

1833-4, p. 42, 43,
§ 80, 86; p. 52,
§ 127.

§ 21. The clerk of every regimental court of enquiry shall make out tickets of all fines certified to him under the preceding section, and of all fines assessed by such court, or by any battalion court of enquiry in his regiment. No ticket for a fine imposed by a battalion court of enquiry shall be made out until a regimental court of enquiry shall have intervened.

Id. p. 49, § 112.

§ 22. When a commandant of a regiment is fined by a regimental court of enquiry, the clerk of such court shall make out a ticket thereof, and transmit the same to the clerk of the regimental court over which such commandant presides, and certify the fact to the first auditor.

§ 23. If any court of enquiry shall fine its clerk, the presiding officer of such court shall make out the ticket for such fine.

Id. p. 45, § 93.

§ 24. Any officer or soldier fined by a regimental court of enquiry, when he was not present, may, at any time before the succeeding regimental court, apply to the commandant of his regiment, and upon affidavit, showing good cause therefor, the said commandant may suspend the collection of the fine, by a written order to the clerk of such court, or to the sheriff, (as the case may be,) and said succeeding regimental court shall have power to remit or confirm the fine, and its decision shall be final.

How tickets for fines are delivered for collection.

Id. p. 43, § 86; p.
152, § 127.

§ 25. The tickets so made out by any clerk according to the twenty-first section, or received by any clerk under the twenty-second section, shall, by such clerk, be placed, before the fifteenth day of June following, in the hands of the sheriff or collector of the revenue for his county or corporation.

1833-4, p. 44, § 89.
1845-6, p. 22, ch.
21.

§ 26. When any ticket shall be returned not collected, in consequence of the removal or non-residence of the person fined, the clerk of such court, upon being so directed by an order thereof, shall transmit such ticket to the clerk of the regimental court of enquiry for the regiment in which the delinquent is supposed to reside, paying postage thereon, (which shall be refunded out of the militia fines,) and shall certify the fact to the first auditor. Such ticket shall, by the clerk to whom it is so transmitted, be placed, before the fifteenth day of June following, in the hands of the sheriff or collector of the revenue for his county or corporation.

1833-4, p. 43, § 86;
p. 45, § 94; p. 52,
§ 127.

§ 27. Every clerk so placing tickets in the hands of any sheriff or collector, shall make out an alphabetical list of such

tickets, and include therein the ticket for any fine, the collection whereof shall have been suspended and not remitted. At the foot of such list the clerk shall take from the sheriff or collector a receipt for the tickets therein mentioned; and before the first day of September following, he shall transmit to the first auditor a certified copy of such list and receipt. If there be no tickets of fines which could have been placed by any clerk in the hands of a sheriff or collector, the clerk shall certify that fact to the auditor.

§ 28. Every such clerk shall make out separate tickets for such of the fines assessed as aforesaid, as may be on officers or members of volunteer companies for delinquencies at the extra musters of such companies required by law; and before the fifteenth day of June, annually, shall make out an alphabetical list thereof, and take from the sheriff or collector of such company, his receipt thereon; and at the time he transmits a list to the auditor, he shall transmit to the commandant of every such company, a certified copy of the list of the fines for such delinquencies at extra musters of his company.

§ 29. A ticket made out under the twenty-third section shall be placed, by the presiding officer of the court, in the hands of the sheriff or collector, under the regulations prescribed for other fine tickets so far as applicable.

As to fines under by-laws of volunteer companies.

§ 30. Every volunteer company may, by its by-laws, prescribe the contributions to be made by its officers and members, the fines upon them for delinquencies at any muster or meeting required by its by-laws, and the mode of assessing such fine. 1845-6, p. 22, ch. 22, § 1, 2.

§ 31. Tickets for such contributions and fines may be made out by the officer on whom that duty devolves under the by-laws.

§ 32. Such officer may place the said tickets, before the fifteenth of June following such assessment, in the hands of the sheriff or collector for the regiment to which such company belongs or is attached, and take his receipt therefor; or they may be placed in the hands of any person authorized under the by-laws of such company to act as collector thereof, who shall have the same power that a sheriff or public collector would have for that purpose, and may be proceeded against in the name of such company by a warrant before a justice, if the amount exceed not twenty dollars, and if it does, either by an action or by motion. 1845-6, p. 22, ch. 22, § 3.

As to tickets for fines not delivered out in due time; and as to the collection of fines.

§ 33. Tickets for fines not placed in the hands of a sheriff or collector in due time, may be placed in a subsequent year 1833-4, p. 46, § 97.

in the hands of a sheriff or collector, who shall receive and collect them, and account therefor as for other militia fines.

1833-4, p. 39, § 59;
p. 43, § 86, 7; p.
53, § 128.
1842-3, p. 12, ch.
4, § 1.
1845-6, p. 22, ch.
22, § 1, 4, 5.
Post. ch. 36, § 4,
5, 6, 7, 11, 12, 13.

§ 34. Every such sheriff or collector, in whose hands tickets for fines may be placed, shall collect the same in like manner as state taxes are collected. And the fourth, fifth, sixth, seventh, eleventh, twelfth and thirteenth sections of the thirty-sixth chapter, shall govern in like manner as if militia fines were mentioned therein where taxes are mentioned.

As to the appropriation of fines; the allowances thereout.

1833-4, p. 46, § 98.

§ 35. Militia fines shall constitute a fund for defraying the expenses of the militia establishment.

§ 36. There shall be allowed by the respective regimental courts of enquiry, and paid out of the militia fine fund, to the several officers and persons hereafter named, the following fees, viz:

Id. p. 42, § 79, 80.
1842-3, p. 23, ch.
21, § 8.

§ 37. To the clerk of every court of enquiry (other than company courts of enquiry,) for attendance on each court or board of officers, during its session, not exceeding five dollars; for making out the list or lists of tickets placed in the hands of a sheriff or collector in any year, five dollars; and for the copies thereof certified to the first auditor, five dollars.

1833-4, p. 42, § 80;
p. 43, § 82.
1836-7, p. 21, ch.
23, § 3.
1839, p. 23, ch. 28.

§ 38. To the clerks of the courts of enquiry for the fourth, seventh, nineteenth, thirty-ninth, fifty-fourth, one hundred and seventy-fifth, and one hundred and seventy-ninth regiments, for their attendance at each of their regimental and battalion courts of enquiry, ten dollars; and for their attendance on any board of officers, five dollars; to the clerk of the courts of enquiry for the nineteenth, fifty-fourth, one hundred and seventy-fifth, and one hundred and seventy-ninth regiments, an additional sum of twenty-five dollars per annum.

1833-4, p. 42,
§ 79, 80.

§ 39. To the provost marshal for each day he shall attend the courts of enquiry, one dollar.

1833-4, p. 31, § 14.
1842-3, p. 23, ch.
21.
1845-6, p. 20, ch.
19.

§ 40. To the adjutant of every regiment for attending the regimental musters, or the battalion musters substituted therefor, and the trainings of the officers, and to the adjutant of the twenty-fifth regiment for attending the training of that regiment, four dollars for each day's attendance.

1839-40, p. 26, ch.
16, § 1.

§ 41. To the adjutant or any other officer of the line ordered to perform the duty, for enrolling, notifying and mustering any company which has no officers, and reporting delinquents in said company, not exceeding two dollars per day whilst actually employed in such duty. But not more than eight dollars shall be allowed for any company in one year.

1833-4, p. 31, § 14.

§ 42. To the sergeant-major of every regiment for each day he may attend the regimental musters, or battalion musters substituted therefor, and the trainings of the officers, not exceeding two dollars.

Id. p. 32, § 15.
See ante. p. 123,
ch. 23, § 30.

§ 43. To the expresses employed under the thirtieth section of the twenty-third chapter, not exceeding three dollars per

day; but the governor, for extraordinary services, upon the certificate of the officer employing the express, may allow such additional compensation as he may judge reasonable.

§ 45. To drummers, fifers and buglers, for attending musters and trainings, at which they are authorized to be employed, not exceeding two dollars for each day's attendance. 1833-4, p. 40, § 66.

§ 46. For musical instruments, when purchased according to law, for a drum and fife, not exceeding twelve dollars, and for each bugle, not exceeding fifteen dollars; the price in all cases to include the cost of transportation and other incidental expenses. Id. p. 46, § 99. 1839-40, p. 27, ch. 16, § 3.

§ 47. For colours for regiments in actual service, to be purchased by the executive, not exceeding thirty dollars for each stand. Id. p. 27, § 2.

§ 48. To each company of artillery allowed to hire horses, a sum not exceeding one dollar per day for each horse hired at every muster required by law. 1833-4, p. 37, § 47.

How claims on fine fund are certified and paid.

§ 49. All claims upon the militia fine fund shall be certified by the clerk of the regimental court allowing the same, and shall be countersigned by the commandant of the regiment; and the said clerk shall, within sixty days after the adjournment of said court, transmit to the first auditor a list of all claims so allowed, or if there be none, he shall certify that fact. Id. p. 43, § 83; p. 46, § 100.

§ 50. No clerk of a regimental court shall grant any duplicate certificate of any claim allowed by said court, unless the court, upon satisfactory proof of the loss or destruction of the original and of the non-payment thereof, shall order a duplicate to be issued. And the clerk, upon the face thereof, shall state that it is a duplicate issued by order of court. Id. p. 43, § 84.

§ 51. Allowances by regimental courts of enquiry shall be paid by the sheriff or collector, on or before the first day of October after the order of the court granting the same, out of any money in his hands arising from militia fines; or if not so paid, then, (upon the warrant of the first auditor on the treasury,) out of the militia fine fund or any other fund appropriated by law for that purpose. The first auditor shall issue no such warrant before the said first of October, unless he be satisfied that the fines of the regiment will be insufficient therefor. Nor shall he issue such warrant afterwards, unless the claim be presented to him within three years, after the allowance thereof by the court of enquiry. Id. p. 44, § 91; p. 45, § 96; p. 46, § 100. 1837, p. 21, ch. 23.

Remedy of claimant against collecting officer, and officer's commissions.

§ 52. If any sheriff or collector shall fail to pay any claim or allowance properly certified, having funds in his hands 1833-4, p. 45, § 96.

arising from fines sufficient therefor, the court of the county or corporation of which he is sheriff or collector, on motion of the person holding said claim, shall render judgment against him for the amount thereof, with costs.

1833-4, p. 39, § 59;
p. 43, § 86; p. 53,
§ 128.
1834-5, p. 23, ch.
21, § 10.
1845-6, p. 22, ch.
22, § 5.

§ 53. There shall be allowed to the several sheriffs or collectors, for collecting and accounting for all militia fines and fines for extra musters of volunteer companies, a commission of ten per centum on the amount collected; and for collecting and accounting for fines assessed under the by-laws of volunteer companies, not less than ten nor more than fifteen per cent., as the commandants of said companies shall deem proper.

Lists of insolvents.

1833-4, p. 43, 4,
§ 88.
1845-6, p. 22, ch.
22.

§ 54. The sheriff or other collector, after ascertaining what tickets mentioned in any receipt are to be returned as incapable of being collected, shall make out alphabetical lists of three classes, to wit: first, of all to be so returned, except such as are for fines for delinquencies at the extra musters of any volunteer company required by law, or for fines or contributions under the by-laws of any volunteer company; secondly, a separate list for each volunteer company, of such as are for fines for delinquencies at the extra musters of such company required by law; thirdly, a separate list for each volunteer company, of such as are for fines or contributions under the by-laws of such company. Such sheriff or collector shall return the list first mentioned to his regimental court of enquiry, and the other lists to the court of enquiry of the particular volunteer company or the commandant thereof.

Id.

§ 55. A copy of every such list shall, at the county or corporation court next preceding the meeting of any court of enquiry to which any list is to be so returned, be posted at the door of the courthouse thereof; and for failing to do so the sheriff or collector shall be subject to a fine of not less than five nor more than ten dollars.

1833-4, p. 43, 4,
§ 88.

§ 56. To every list so returned there shall be annexed an affidavit of the sheriff or collector to the following effect: *This day A. B., sheriff (or deputy sheriff,) for the county (or corporation) of _____, made oath before me, a justice for the said county, (or corporation,) that he has used due diligence for the collection of the sums mentioned in the foregoing list, and has collected no part thereof, and he believes no part of the same can be made within his bailiwick. Given under my hand this*
day of _____.

Id.

§ 57. The court of enquiry to which such list is so returned, shall compare the said list with the tickets and examine it in other respects; and after correcting it in those respects in which, in its opinion, it ought to be corrected, shall direct their clerk to certify that it is deemed by them to be correct and ought to be allowed.

§ 58. Of the lists so allowed, those of the first class, mentioned in the fifty-third section, shall be returned to the first auditor, and those of the second and third classes, mentioned in that section, shall be returned to the treasurer of the particular volunteer company. Every such list shall be so returned to the auditor or such treasurer, within one year from the date of the receipt of the sheriff or collector for the tickets mentioned in such list. And unless so returned within that time, the auditor or such treasurer shall not allow the same.

Liability of sheriff or collector.

§ 59. Whatever may be due from any sheriff or collector, on account of tickets for delinquencies at the extra musters of any volunteer company required by law, or for fines or contributions under the by-laws of such company, after making the proper deductions for any list so returned and for commissions, shall be paid within one year from the date of the receipt for such tickets, to the treasurer of the said company or such other officer as may be appointed by the company to receive the same. And in case of failure so to pay, the same may be recovered in the name of the company, if the amount exceed not twenty dollars, by warrant before a justice, or if it exceed that sum, either by action or by motion, in the court of the county or corporation in which the sheriff or collector may reside.

§ 60. Whatever may be due from any sheriff or collector on account of tickets for other fines, shall be paid into the treasury of the state, on or before the fifteenth day of January next after the date of the receipt for such tickets. In case of failure so to pay, proceedings may be had according to the forty-second chapter. In any such proceeding, the copy of the list of such tickets and of the sheriff's receipt therefor, transmitted to the first auditor, shall be received as evidence.

CHAPTER XXXI.

OF BOARDS OF OFFICERS, COURTS OF ENQUIRY AND COURTS MARTIAL.

- Boards of officers.*
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 2. Their powers.
 3. Officers of board.

Battalion courts of enquiry.

4. How constituted.
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- SEC.
6. Oaths of president and members.
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Regimental courts of enquiry.

10. How constituted.
11. When and where to meet.

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Boards of officers.

1833-4, p. 42, § 77. § 1. The commandant of any regiment may at any time summon a board of officers, which shall be composed of the commandant of the regiment, and of the commandants of battalions and companies composing the same, or attached thereto. A majority of said officers shall constitute a quorum. The senior officer present shall preside.

1833-4, p. 42, § 77, 78; p. 46, § 101; p. 50, 51, § 116. § 2. They may fix and alter the times and places of musters, lay off and alter company and battalion districts, and attend to business of the regiment generally, but shall not attend to the assessment or remission of any fines, except for interrupting, molesting or insulting said board or its officers. If a quorum should not attend at the time appointed for any meeting, those present may adjourn from day to day until a quorum be formed; or the commandant of the regiment may appoint another day of meeting, giving reasonable notice thereof.

Id. p. 42, § 79. § 3. The clerk and provost marshal appointed by the respective regimental courts of enquiry shall attend the meetings of the board of officers, and perform the duties pertaining to their respective offices.

Battalion courts of enquiry.

Id. p. 37, § 45; p. 38, § 56; p. 41, § 73. § 4. There shall be in each regiment two battalion courts of enquiry, composed each of the commandant of the battalion and the commandants of companies in the battalion or attached to the same. A majority of said officers shall constitute a quorum. The senior officer present shall preside.

Id. p. 41, 2, § 73. § 5. The said courts shall be held annually at such time in October or November, and at such place, as the commandant of the regiment may appoint.

Id. p. 42, 3, § 73. § 6. The presiding officer of a battalion court shall administer to the members thereof, and afterwards any member shall

administer to him, the following oath: *You shall faithfully enquire into all delinquencies to be laid before you, and shall assess the fines thereon without favour, partiality or affection. So help you God.*

§ 7. The clerk and provost marshal appointed by a regimental court of enquiry shall attend the meetings of the battalion courts in the regiment, and perform the duties pertaining to their offices. 1833-4, p. 42, § 79.

§ 8. A battalion court shall have power to assess fines according to the preceding chapters (under this title,) upon non-commissioned officers, musicians and soldiers in the battalion, or upon others where specially authorized, and may adjourn from time to time until the business before it shall be completed. If a quorum should not attend at the time appointed for any meeting, those present may adjourn until a quorum be formed, or the commandant of the battalion may appoint another day of meeting, giving reasonable notice thereof. Id. p. 41, 2, § 73, 74, 78; p. 50, 51, § 116.

§ 9. Every person fined by any battalion court of enquiry, who thinks the fine should be remitted or lessened, may appeal to the next regimental court. Id. p. 42, § 75.

Regimental courts of enquiry.

§ 10. In every regiment there shall be a regimental court of enquiry, composed of the commandant of the regiment and commandants of battalions and companies in the regiment or attached to the same. A majority of said officers shall constitute a quorum. The senior officer present shall preside. The surgeon *or** surgeon's mate shall attend the said courts. Id. p. 37, 8, § 45, 56; p. 41, § 73.

§ 11. The court shall be held annually at such time in November or December, (after the last battalion court of enquiry,) and at such place as the commandant of the regiment may appoint. Id. p. 41, § 73.

§ 12. The president and members of said court shall take the oath prescribed for the president and members of battalion courts, and it shall be administered to each in the same manner. Id. p. 41, 2, § 73.

§ 13. The regimental court shall appoint a clerk and provost marshal, who shall be removable at its pleasure. The president of the court shall administer to the clerk an oath faithfully to execute his duty. Such oath shall be taken by the clerk before acting as such. In addition to the other duties required of the clerk, he shall keep a fair record of the proceedings of the court, and of the returns made by the several commandants of companies for regular routine of duty. Id. p. 42, 3, § 79, 80, 81.

§ 14. The president of the court shall certify to the first auditor, within ninety days after an appointment of clerk, the name of such clerk. Id. p. 43, § 82.

§ 15. The said regimental court shall have power to assess fines according to the preceding chapters, (under this title,) Id. p. 41, 2, § 73, 74, 78.

* The word was *and* in amendment of committee on revision as printed; it was written *or* in engrossed and enrolled bill.

upon officers of the regiment and upon other officers attached thereto, or upon other persons where specially authorized. It may adjourn from time to time, until the business before it is completed. If a quorum shall not attend at the time appointed for any meeting, those present may adjourn until a quorum be formed, or the commandant of the regiment may appoint another day of meeting, giving reasonable notice thereof.

1833-4, p. 42, § 75. § 16. A regimental court may hear and determine appeals from either of the two preceding battalion courts, and may remit or lessen any fine imposed by either of them, or any fine imposed by the preceding regimental court and suspended by order of the commandant of the regiment.

Courts martial.

Id. p. 55, 6, 7, § 146, 7, 154. § 17. The governor, for misconduct within his own knowledge, or upon complaint lodged in writing by any commissioned officer, supported by affidavit, shall have power (if the offence be cognizable by a military tribunal) to arrest any major-general, brigadier-general, or the adjutant-general.

Id. p. 57, § 155. § 18. Any major-general or brigadier-general in like manner may arrest any field officer, or officer of similar rank; and any field officer in like manner may arrest any captain or subaltern or officer of similar rank.

Id. p. 56, § 148. § 19. No officer shall be arrested for any act done two years before the application for such arrest.

§ 20. Any officer making an arrest shall forthwith certify the same to the governor, together with the cause thereof, the charges, specifications and the proofs offered to sustain them.

Id. § 21. If the governor shall refuse to order a court martial upon any officer arrested, he shall cause an order of discharge to be issued. And if no court martial be ordered within sixty days after the arrest, the arrested officer shall be restored to command.

Id. p. 55, 6, § 146, 148. § 22. The governor, for misconduct within his own knowledge, or upon complaint in writing by any commissioned officer, may order a court martial to investigate charges against any officer of the militia. His order for such court shall be issued to the adjutant-general, if the officer to be tried be a general or field officer, or officer of similar rank, or to the commandant of the brigade to which he may belong, if he be a captain or subaltern, or officer of similar rank.

Id. p. 56, § 150. § 23. A court martial shall consist of not less than five nor more than nine members.

Id. p. 56, § 149, 150. § 24. If the court be for the trial of a major-general, a brigadier-general, or the adjutant-general, it shall be composed of one major-general, not more than four brigadier-generals, and as many field officers as will make up the number required.

Id. § 25. If the court be for the trial of any field officer, or officer of similar rank, it shall be composed of one brigadier-

general, and as many field officers and captains as will make up the number required.

§ 26. If the court be for the trial of any captain or subaltern, it shall be composed of one or more field officers, and as many captains or subalterns as will make up the number required. ^{1833-4, p. 56, § 149, 150.}

§ 27. At least ten days before the meeting of any court martial, the officer detailing the same shall give the officer arrested, notice in writing of the time and place of the sitting of the court for his trial, and shall furnish him with a list of the officers detailed therefor.

§ 28. When any court martial shall have been ordered, the governor, or the officer ordering the arrest, shall draw up in writing the charges and specifications of the alleged offence, shall sign his name thereto, and cause a duplicate thereof to be delivered to the accused at least ten days before the trial. Upon such trial nothing shall be alleged against the accused except what is embraced in such charges and specifications. ^{Id. p. 57, § 153.}

§ 29. The officer detailing a court martial for the trial of any commissioned officer, shall appoint a judge advocate, and an orderly to summon the court and witnesses. And the court, when organized, may appoint a provost marshal. ^{Id. p. 57, § 157.}

§ 30. If, from any cause, any of said officers shall fail to attend and perform the duties required of him, the court, while sitting, may appoint another in his stead. ^{Id.}

§ 31. The judge advocate, after being notified of his appointment, shall issue subpoenas for witnesses as well for the prosecution as for the accused; shall attend the court, attend to the preparation, care and disposition of the record, have the custody and safe keeping of all papers connected with the trial, and perform all the duties pertaining to his office as prescribed by the regulations for the army of the *United States*. ^{Id. Army regulations, p. 84.}

§ 32. Before any court martial shall proceed to the trial of any officer, the judge advocate shall administer to the members thereof the following oath: *I do swear that I will faithfully and impartially try the matter now depending between the Commonwealth of Virginia and C. D., and determine it to the best of my judgment, according to law and the evidence, and that I will not disclose the vote or opinion of any member of this court, unless required to give evidence thereof in a court of justice, or in due course of law. So help me God.* ^{1833-4, p. 58, § 160.}

§ 33. The president of the court, so soon as he shall have been sworn, shall administer to the judge advocate the following oath: *You swear that you will not at any time disclose the vote or opinion of any member of this court, or the sentence thereof, unless required to give evidence thereof in a court of justice, or in due course of law. So help you God.* ^{Id.}

§ 34. If any person summoned as a witness to attend any court martial, shall fail to attend accordingly, the said court may impose upon him a fine not exceeding one hundred ^{Id. p. 57, § 152, 158.}

dollars, and if such witness be an officer, he shall be liable to arrest and trial by a court martial, and to be cashiered or censured. The said court may also enforce the attendance or punish the non-attendance of a witness by imprisonment.

§ 35. If any person so summoned and attending shall refuse to give evidence, he may be fined as aforesaid, or be committed to prison by the court, as for a contempt.

§ 36. In case any witness shall be fined by any court martial, the judge advocate shall place in the hands of the sheriff or collector for the county or corporation, in which such witness resides, a fine ticket for the amount of such fine, and make a return to the first auditor, setting forth against whom such ticket issued, when, for what amount, and to what officer it was delivered. The sheriff or collector shall collect the same in like manner as taxes are collected, and the fourth, fifth, sixth, seventh, eleventh, twelfth and thirteenth sections of the thirty-sixth chapter, shall govern in like manner as if such fine was mentioned therein where taxes are mentioned. Whatever may be collected on account of such fine, after deducting a commission of five per centum on the sum collected, shall be paid into the treasury of the state on or before the fifteenth day of December next after the receipt of such ticket. In case of failure so to pay, proceedings may be had according to the forty-second chapter.

Post, ch. 36, § 4,
5, 6, 7, 11, 12, 13.

Post, ch. 42.

1833-4, p. 58,
§ 160.

§ 37. In the trial of any case before a court martial, the court shall proceed unless otherwise specially provided by law, according to the rules and articles of war as established by congress, and according to the practice and laws which govern such cases in the army of the *United States*.

Id. p. 56, § 150.

§ 38. A court martial for the trial of an officer may sentence him to be censured or cashiered, but no sentence shall be executed until the proceedings of the court shall have been laid before the governor and approved by him.

Id. p. 56, 7, 8,
§ 150, 151, 152,
163.

§ 39. Every person who shall think himself aggrieved by the judgment of a court martial may appeal therefrom to the executive, and for that purpose may demand of the judge advocate a full copy of the proceedings, upon paying him a reasonable sum for the same, to be adjudged of by the court. The governor may remit the proceedings to the said court for reconsideration, or may confirm or disapprove the same, and his decision shall be final.

Id. p. 58, § 161.

§ 40. Each officer attending as a member of a court martial shall receive three dollars for every day he shall attend, and three dollars for every twenty miles he shall necessarily travel in going to and returning from the place appointed for the meeting of the court.

Id.

§ 41. The orderly appointed to summon the court and witnesses, shall receive ten cents for every mile he shall necessarily travel in performing such duty, and one dollar per day for his attendance on the court.

§ 42. The judge advocate shall receive for his services not exceeding ten dollars per day, and the provost marshal not exceeding two dollars per day; the compensation in each case to be adjudged by the court. ^{1833-4, p. 58, § 162.}

§ 43. The witnesses attending the court shall receive the same compensation for attendance and mileage as is allowed to witnesses attending the superior courts of law. ^{Id. p. 58, § 161.}

§ 44. All compensation to the court and its officers, and other incidental expenses, shall be certified to the governor by the court, if any shall be holden, or if not, by any three officers summoned to attend as aforesaid, and shall be paid out of the contingent fund, except only that the expense of more than three witnesses to the same fact shall be paid by the party at whose instance they attend. ^{Id. p. 58, § 159, 163.}

§ 45. Every officer commanding a regiment or corps, in actual service, may appoint for his own regiment or corps, a court martial, to consist of three commissioned officers, for the trial and punishment of any non-commissioned officer, musician or soldier belonging thereto, for all offences not capital. ^{Id. p. 54, § 139. Articles of War, No. 66, 67.}

§ 46. Such court shall be governed by the rules which govern similar courts in the army of the *United States*.

§ 47. The proceedings in such court shall be submitted to the officer ordering the same, for his revision and decision, and such officer may pardon or mitigate any punishment ordered by such court to be inflicted.

§ 48. If the accused thinks himself aggrieved by the decision of any such court, he may appeal to a general court martial, which shall be detailed for that purpose; when a new trial shall be had, and the proceedings shall be the same as in other cases tried by general courts martial.

CHAPTER XXXII.

CONCERNING IMPRESSES BY MILITARY AUTHORITY AND INJURIES DONE TO REAL PROPERTY BY MILITARY OCCUPATION.

SEC.

1. } Impressment of supplies.
2. }
3. Impressment for expresses.

SEC.

4. Occupation of real property.
5. }
- to } Mode of compensating owner.
8. }

Impressment of supplies.

§ 1. Any officer in command of any corps or detachment of the militia, or other troops, in the actual service of the state, when unable to procure supplies by contract in due time, may impress such transportation, fuel, forage, rations, ^{1 R. C. p. 134, ch. 37, § 4.}

camp equipage and horses for artillery service, as may be required for the use of said corps or detachment. He shall give a certificate to the owner of the property so impressed, or his agent, of the value thereof.

1 R. C. p. 121,
§ 87.
1833-4, p. 54,
§ 135, 137.

§ 2. The commanding officer of such corps or detachment shall return an account of the property impressed, and of its value as certified by him, to the court of enquiry of the regiment, within the bounds of which the property was procured. He shall either deliver such property (or so much of it as is unconsumed) to the owner thereof, when his tour of duty is over, or to the quartermaster or other officer authorized to receive it, at the post or place where such corps or detachment shall have served or be discharged; and the said quartermaster or other officer to whom the same may be delivered shall return said property to the owner thereof, when no longer wanted for the public service for which it was taken. In either case the officer returning said property to the owner shall report to the said court of enquiry the property returned and the value thereof at the time of such return.

Impressment for expresses.

1 R. C. p. 135,
§ 5.

§ 3. Any officer authorized to send expresses either to the executive or to any part of the militia in actual service, or when there shall be danger of insurrection or invasion, may, for that purpose, when they cannot be otherwise procured, impress so many horses as may be necessary, or by written authority empower the express employed by him to impress such horses.

Occupation of real property.

Id. p. 133, § 3.

§ 4. When necessary, the militia or troops of the state in actual service may occupy the fields, woods or other real property of any person within the state.

Mode of compensating owner.

Id. p. 121, § 87;
p. 133, 4, § 3, 4, 5.
1833-4, p. 54,
§ 135, 137.

§ 5. For property so impressed or occupied, which is consumed in the public service or lost, destroyed or injured therein, or by such occupation, the owner shall receive a just compensation, to be ascertained as follows: He may make his claim for such compensation to the court of enquiry for the regiment within the bounds of which the impressment was made, or the real property occupied is situated, and the court shall make an allowance of the value of all property so impressed, which was consumed, or lost or destroyed in the public service, with legal interest on such valuation from the time the property was so impressed, and of a reasonable hire for the use of any such property as may have been returned to the owner, for the time it was detained, together with compen-

sation for any injury such property sustained while in the public use. For any injury done to real property in consequence of the occupation thereof by the militia or other troops of the state, the said court of enquiry shall make an allowance of such sum as it may deem just.

§ 6. If the owner of any property so impressed or occupied, be satisfied with such allowance, the same shall be certified and paid in the same manner in which other allowances by courts of enquiry are certified and paid. 1833-4, p. 54,
§ 135, 137.

§ 7. But if the said owner be not satisfied with such allowance, he may require the amount of his compensation to be ascertained and determined as follows: The commandant of the regiment within whose bounds the injury complained of was done, shall choose one person, being a freeholder, on the part of the commonwealth, and one other person, being a freeholder, in no wise interested or in any way connected with the owner of said property, shall be selected by such owner. The two persons so chosen shall appoint a third freeholder, in like manner disinterested and unconnected. The persons so chosen shall take an oath faithfully and impartially to discharge their duty, and upon such evidence as may be adduced before them, and upon their own view of such property, (in case it be real property,) shall ascertain as nearly as they can the amount of compensation to which the owner of said property is entitled, and grant a certificate thereof to the following effect: *We, A. B., C. D. and E. F., chosen on behalf of the commonwealth and of G. H., to ascertain the compensation to which the said G. H. is entitled in consequence of the impressment of certain property of his in the county of _____, (or in consequence of the occupation of his real property in the county of _____,) to wit: (here insert a description of the property,) by certain troops in the service of the state of Virginia, commanded by _____, do hereby certify, that after being duly sworn, we heard all the evidence offered to us, and have ascertained the compensation to which the said G. H. is entitled, to be, according to our best judgment, the sum of _____.* Given under our hands this _____.

A. B.
C. D.
E. F.

§ 8. If any two of said persons agree, their decision shall be final. If they do not, other three persons may be chosen in the same way. Any such certificate, accompanied by certificates of their appointment, in pursuance of this chapter, and of their having taken the oath aforesaid, shall entitle the owner of the property to receive the amount of compensation so ascertained, and the same shall be paid, on the order of the governor, out of any money in the treasury not otherwise appropriated.

CHAPTER XXXIII.

THE PUBLIC GUARD AND ARMORY.*

<i>Public guard.</i>		SEC.	
SEC.		15.	Who acts as orderly or provost-marshal.
1.	Of whom it consists, for what term men are enlisted, and how officers are appointed.	16.	Court martial for men.
2.	Appointment and bond of paymaster.	<i>Armory.</i>	
3.	Pay of officers and men; and their rations, clothing, &c.	17.	Guard stationed there.
8.		18.	Part of guard sent to bell-house and penitentiary.
9.	Duties of surgeon.	19.	Commandant's duties as to armory, arms, &c.
10.	Hospital steward and matron.	20.	
11.	Annual return of commandant.	21.	Arms at Lexington arsenal unfit for service to be brought to armory for repair.
12.	Guard subject to governor's orders and army regulations.	22.	
13.	Court martial for officers.	23.	Artificers employed; their pay.
14.	Allowance to judge advocate.	24.	Pay of officers of guard for additional duties.

Public guard.

1800-1801, p. 34, ch. 62.
1803-1804, p. 53, ch. 86.
1831-2, p. 16, ch. 19.
1835-6, p. 14, ch. 13, § 1.

§ 1. The company called the public guard shall be continued, and shall consist as at present, of a captain, a first and second lieutenants, six sergeants, six corporals, two musicians, and seventy other able-bodied men; the captain and lieutenants to be appointed and commissioned by the governor when vacancies may happen; the men to be enlisted by the commandant from time to time for the term of three years, unless sooner discharged; and the non-commissioned officers to be appointed by the said commandant. The company shall be composed of citizens of the *United States*.

See ante, p. 88, ch. 13, § 8.

§ 2. One of the officers shall be appointed by the governor, paymaster of the guard, and shall continue in such office during the pleasure of the governor. He shall give bond, to be approved by the governor, in the penalty of two thousand dollars, conditioned for the faithful performance of the duties of his office, and be incapable of acting until such bond be given.

1800-1801, p. 34, ch. 62.
1803-1804, p. 53, ch. 86.

§ 3. The pay per month of the said company shall be as follows: of the captain, forty-dollars; of the first lieutenant, thirty dollars; of the second lieutenant, twenty-six dollars;

* An act of the 23d of January 1798, to establish arsenals and a manufactory of arms (Sess. Acts. p. 12, ch. 18,) empowered the executive to establish a manufactory of arms within the vicinity of *Richmond*. This act and those subsequently passed for the government and regulation of this manufactory were reduced into one by the act of February 27, 1819, in 1 R. C. p. 130, ch. 36.

The act to establish a guard in the city of *Richmond* passed the 22d of January 1801, (Sess. Acts 1800-1) p. 34, ch. 62. The preamble to it recites that "it is expedient in the present crisis of affairs, that proper guards should be kept for the security of the public property in the city of *Richmond*." Under this act, the guard was to be enlisted for three years; an act for continuing it passed the 17th of January 1804. Sess. Acts 1803-4, p. 53, ch. 86.

An act of the 3d of March 1821, (Sess. Acts 1820-21, p. 16, ch. 12,) provided that on the first day of January following, the operations at the manufactory of arms should cease. Under an act of the 28th of February 1822, (Sess. Acts 1821-2, p. 9, ch. 6,) the public guard was removed to the armory, by which name the manufactory was known.

of each sergeant, ten dollars; of each corporal and musician nine dollars, and of each private, eight dollars. Each non-commissioned officer, musician and private, shall receive one ration per day in kind, and the same clothing and quartermaster's stores as are allowed to infantry in the service of the *United States* under the laws and regulations thereof, now in force. Each of the commissioned officers shall be entitled to four rations per day, and each shall be allowed for one servant, the pay, rations and clothing of a private, and such quartermaster's stores for himself and a servant as are now allowed to officers of the same grade in the infantry of the *United States*.

§ 4. The commandant for the time being shall be considered as in command of a separate post, and entitled thereby to four rations in addition per day. He shall be allowed ten dollars per month for responsibility for the arms, clothing and accoutrements of the company.

§ 5. The paymaster shall receive for his services as such ten dollars per month, without any rations or other allowance.

§ 6. The commissioned officers may severally commute the rations allowed them at twenty cents for each ration, and the rations and clothing allowed for servants at the contract price, or the cost of the rations and clothing for the guard. The pay, allowances and commutation money of the officers and men shall be payable every two months.

§ 7. The guard may be employed in extra duty, and each of the men may be allowed one dollar per month in lieu of the ration of spirits; and each of them who, at the expiration of his term of enlistment, shall obtain an honorable discharge, shall be entitled to a gratuity of fifteen dollars.

§ 8. The commandant, under the direction of the governor, shall contract for clothing, rations and quartermaster's stores for the guard.

§ 9. The surgeon to the public guard shall visit the station of the guard once at least every day, and oftener when there are cases of sickness requiring his attendance, or when he is called upon to attend by the commandant. He shall, before leaving the city of *Richmond* at any time, notify the said officer of his intention, and the time he expects to be absent, and what physician may be called on to officiate for him in his absence.

§ 10. The commandant shall appoint a hospital steward from the company to attend to the sick, prepare and administer the medicines, and see that the prescriptions of the surgeon are complied with, who shall receive an addition to his pay of four dollars per month. He may also employ a hospital matron, at such price as may be agreed on, not exceeding eight dollars per month.

§ 11. The commandant shall annually by the first day of October make a return to the adjutant-general, shewing the strength of the guard.

1822-3, p. 49, ch. 44, § 13.
1826-7, p. 10, ch. 6, § 2.
1830-31, p. 125, ch. 53, § 4.
1831-2, p. 16, ch. 19.
1832-3, p. 20, ch. 24, § 1.

1831-2, p. 16, ch. 19, § 3.
Army regulations of U. States, p. 343, § 1251.
Id. p. 347, No. 1.

Army regulations, p. 347, No. 2.

1832-3, p. 19, ch. 23, § 2; p. 20, ch. 24, § 2.

1800-01, p. 35, ch. 62.
1829-30, p. 11, ch. 6, § 6.

1831-2, p. 16, ch. 19, § 4.

Id. § 5.

1844-5, p. 19, ch. 19, § 2.

1800-1, p. 34, ch. 62. § 12. The guard shall be subject to the orders of the governor, and to the rules, regulations and punishment prescribed for the troops of the *United States*, except that death shall not be inflicted.

1835-6, p. 14, ch. 13, § 2, 3. § 13. A court martial for the trial of the captain or either of the lieutenants, shall consist of seven officers of the militia, detailed on the order of the governor, all of whom shall be of a grade above that of the officer to be tried.

Id. § 4. § 14. The judge advocate of any such court shall be allowed for his services ten dollars per day while actually engaged as such.

Id. § 5. § 15. The officer who may be in command of the guard at the time of any such court, shall detail a suitable non-commissioned officer of the corps to act as orderly or provost marshal of the court.

1800-1, p. 35, ch. 62. § 16. The three officers shall be sufficient to hold a court martial for the trial of any of the men of the guard. In case any of the said officers should be dead, absent or unable to attend, the commandant of the nineteenth regiment shall summon a commissioned officer of the militia in his stead; there shall, however, be present at least one of the officers of the guard as a member of the court.

Armory.

1821-2, p. 9, ch. 6, § 3. § 17. The guard shall be stationed at the armory, and have such quarters therein as will be best suited for their comfort and the preservation of the buildings and machinery.

1814-15, p. 78, § 7. § 18. A part of said guard shall be daily sent to the bell-house, as a guard for the protection of the capitol, and a part to the penitentiary. The guard, whilst at the penitentiary, shall be subject to the orders and control of the superintendent thereof, for all armed service.

1821-2, p. 9, ch. 6, § 3. § 19. The commandant shall take care of the armory, its grounds and buildings, the arms therein, and all the machinery and other appendages attached thereto.

1822-3, p. 48, ch. 44, § 6. Ante, p. 140, ch. 27. § 20. He shall, on the order of the governor, deliver any arms in his charge to any person authorized to receive them as directed by the twenty-seventh chapter.

Id. § 21. He shall keep correct accounts of the arms in his charge, and of those delivered out, and make report thereof to the adjutant-general at least once a year. He shall in this report give an account of all the cannon, gun-carriages, and every description of public property at or in the armory or the buildings attached thereto.

1839, p. 16, ch. 19, § 2. § 22. The governor may cause all arms collected at the *Lexington* arsenal, which are unfit for service, to be transported to the armory, to be repaired and packed in boxes for safe keeping.

1830-31, p. 124, ch. 53, § 1, 4. 1831-2, p. 15, ch. 17, § 1. § 23. The commandant shall employ five artificers by the month or day, for cleaning, repairing and packing away in

boxes or air-proof chambers such of the arms as he may select for being repaired and cleaned. The artificers so employed shall be paid their wages in the same manner as the non-commissioned officers and privates; their names being entered upon check and pay rolls. He may employ as artificers, such of the public guard as may be willing and competent, when it will not interfere with the performance of their military duties, paying not exceeding fifty cents per day for any one of the guard so employed. Such compensation shall be paid in the same manner as the wages of the regular artificers.

§ 24. For the additional duties imposed on the officers of the public guard by the provisions of this law in employing artificers and superintending the cleaning, repairing and packing away arms, they shall be allowed annually, in addition to their regular pay and emoluments, two hundred and eighty dollars, to be distributed in proportion to the rank and pay of each, quarterly, as other salaries are paid.

CHAPTER XXXIV.

MILITARY SCHOOL AND LEXINGTON ARSENAL.*

SEC.	SEC.
1. Name of school; and appropriation for its support.	10. Annual examination of his accounts.
2. Board of visitors; of whom composed and how appointed.	11. Of the professors; the power to appoint or remove; and their salaries.
3. Place and times for board to meet.	12. As to terms on which cadets are admitted; their number, instruction and service.
4. How vacancy in board is filled.	13. Of state cadets.
5. Expenses of visitors paid.	14. Power to make arrangement with <i>Washington</i> college.
6. Power to make by-laws.	15. How commissioned officer of militia may be a student.
7. As to arsenal, its grounds and the arms and property there.	16. Cadets a military corps.
8. Power to expend annually in erecting or repairing buildings.	
9. Appointment of treasurer; his bond.	

* An act of the 8th of February 1816, (Sess. Acts 1815-16, p. 32, ch. 16,) required the executive to select and purchase three proper situations for arsenals, one on the western side of the *Alleghany*, and two on the eastern side thereof above the City of *Richmond*, and to have buildings erected for the preservation of the arms and fortifications for the defence of the arsenals; the executive had a discretion as to which should be built first; and that first erected was to be supplied with certain arms and guards before another was commenced. The act in the Code of 1819, page 93, ch. 35, for regulating the militia, contained in § 103 to 113, the act of February 1816. Under those acts the *Lexington* arsenal was established. Further provision on the subject was made by the acts of 1823-4, p. 34, ch. 31, § 1, 2, 4; 1826-7, p. 10, ch. 6, § 1, 6; 1827-8, p. 10, ch. 9; and 1834-5, p. 21, ch. 21, § 1 to 4. By the act of 1828, so much of the previous acts as provided for erecting any arsenal, not heretofore erected, was repealed.

On the 22d of March 1836, an act was passed (Sess. Acts 1835-6, p. 12, ch. 12,) for re-organizing the *Lexington* arsenal and establishing a military school in connexion with *Washington* college. This act was amended by that of 1836-7, p. 20, ch. 22. And the two acts were amended and reduced into one by that of 1839, p. 17, ch. 20; which has since been amended by the acts of 1840-41, p. 55, ch. 28; 1841-2, p. 21, ch. 24; Id. p. 22, ch. 26; 1844-5, p. 17, ch. 19, § 1.

SEC.		SEC.	
17.	Duties of superintendent as to arms.	21.	Annual report of board.
18.	Superintendent's annual return.	22.	Commissions issued to superintendent and certain professors.
19.	How degree of graduate is conferred.	23.	Of the ordnance and quartermaster-sergeant.
20.	Obligation of cadet to act as teacher.	24.	How musicians are enlisted and paid.

1815-16, p. 32, ch. 16.
 1835-6, p. 7, ch. 4.
 1839, p. 17, ch. 20.
 1841-2, p. 21, ch. 24, § 1.
 1846-7, p. 18, ch. 17.
 1847-8, p. 20, ch. 18.
 1848-9, p. 15, ch. 15.
 Post, ch. 79, § 6.

§ 1. The military school established in the county of *Rockbridge*, near the town of *Lexington*, shall be continued under the name of "The Virginia Military Institute," and for the support of the said school, the sum of seven thousand seven hundred and ten dollars shall be annually paid out of the public treasury, and in addition thereto, fifteen hundred dollars shall be annually paid out of the surplus revenue of the literary fund, as directed by the sixth section of the seventy-ninth chapter.

§ 2. There shall be a board of visitors for the institution, composed of the adjutant-general and eight other persons, two of whom shall be, annually, appointed by the governor from each grand division of the state.

§ 3. The board shall meet at the institution. A meeting shall be held, annually, at such time as may have been designated for their annual meeting in their last resolution on the subject. A meeting may also be called at any time by the adjutant-general or by the superintendent of the institution, when either may deem it advisable. And the board may adjourn from time to time.

§ 4. Any vacancy in the board of visitors shall be communicated by the adjutant-general to the governor, who shall forthwith supply the same.

§ 5. Such reasonable expenses as the visitors may incur in the discharge of their duties, shall be allowed by the governor and paid by warrant on the treasury.

§ 6. The board may make by-laws and regulations, not inconsistent with the laws of the state, for their own government and the management of the affairs of the institution, and may, for the purpose of transacting such business as in its opinion can be properly transacted, by a less number than the majority, authorize not less than four members to constitute a quorum.

§ 7. The arsenal and all its grounds and buildings shall be considered as belonging to the institution, and the board shall cause the same and all the arms and other property therein or belonging thereto, to be guarded and preserved.

§ 8. They may expend, annually, a sum not exceeding five hundred dollars, in erecting, altering, or repairing buildings, so as to have such as may be suitable and proper for the military school.

1839, p. 17, ch. 20, § 2.
 1840-41, p. 55, ch. 28, § 3.

§ 9. The board shall, annually, appoint a treasurer, who shall give bond, with sufficient sureties, in the penalty of fifteen thousand dollars, payable to the commonwealth, condi-

tioned for the performance of the duties of his office, which bond being approved by the board and entered at large on its journal, shall be transmitted to the first auditor and remain filed in his office.

§ 10. The treasurer shall, annually, on or before the first day of December in each year, make a detailed report of his accounts to the board of the literary fund, to be by them reported to the general assembly. The board of visitors shall cause a careful examination of his accounts, and a full settlement thereof to be made at least once a year.

§ 11. The board of visitors shall appoint professors to give instruction in military science, and in such other branches of knowledge as they may deem proper; shall fix the salaries of the professors, and may remove them for good cause; but no order to remove a professor shall be made without the concurrence therein of a majority of the whole number of visitors; and the board shall forthwith communicate to the governor a full statement of the reasons on which the removal was made. ^{1839, p. 18, ch. 20, § 2.}

§ 12. They shall prescribe the terms upon which cadets ^{1a.} may be admitted, their number, the course of their instruction, the nature of their service, and the duration thereof, which shall not be less than two nor more than five years. All so admitted shall make full compensation except such as are provided for in the following section.

§ 13. They shall admit as state cadets, free of charge for ^{1a.} board and tuition, upon evidence of fair moral character, not less than thirty-two young men, who shall be not less than sixteen nor more than twenty-five years of age. In their admission, strict regard shall be had to the proportionate population of each of the four great divisions of the state, taking in the first place one from each senatorial district offering a suitable person. In the event of any division not furnishing its proportion, the board of visitors, after giving due notice of such deficiency, may fill the vacancy from any other division.

§ 14. The board may enter into arrangement with the trustees of Washington college, by which the cadets at the military school, and the students at the college, may respectively be admitted to the advantages of instruction provided at either place. ^{1a. § 5.}

§ 15. Any commissioned officer of the militia of this state ^{1a. § 4.} may become a student at the institute for a period of time not exceeding ten months, and receive instruction in any or all the departments of military science taught therein, without being required to pay any fee or charge for tuition.

§ 16. The cadets shall be a military corps under the command of the superintendent, and constitute the guard of the institution. ^{1a. § 2.}

§ 17. The superintendent shall, from time to time, inspect ^{1a.} the arms at the arsenal; cause the same to be kept safe and clean; give receipts for such arms as may be brought there to

be deposited; and obey such orders for the delivery of arms therefrom as he may receive from the governor, as directed by the twenty-seventh chapter.

See ante, p. 140,
ch. 27, § 3.

1844-5, p. 17, ch.
19, § 1.

§ 18. The superintendent shall annually, by the first day of October, make a return to the adjutant-general, shewing the names and number of the officers and cadets at the institute, distinguishing those between the ages of eighteen and forty-five, and shewing also the public arms, ordnance, equipments and accoutrements at the arsenal, and under the charge of the said corps.

1841-2, p. 22, ch.
26.

§ 19. The governor of the state and the board of visitors and faculty of the institute, may confer the degree of graduate upon any cadet found qualified to receive it, after examination upon all the branches of the arts and sciences, and of literature, taught at the institute.

Id. p. 21, ch. 24,
§ 2.

§ 20. Every cadet, who, since the eighth day of March eighteen hundred and forty-two, has been, or hereafter shall be received on state account, and shall have remained in the institution during the period of two years or more, shall act in the capacity of teacher in some school within this state for two years after leaving the institution, unless excused by the board of visitors; but this section shall not be construed so as to deprive such cadet of any of the compensation which he may be able to obtain for teaching.

1839, p. 18, ch. 20,
§ 2.

§ 21. The board of visitors shall annually inspect the public arms and other property at the arsenal, and make a report of their condition, and of the condition of the school, to the governor, to be by him laid before the general assembly.

§ 22. Commissions shall be issued to the superintendent, professor and assistant professor of tactics at the institute, corresponding with those of colonel, major and captain of the *United States'* corps of engineers. Such commissions shall confer no rank in the militia, nor entitle any person holding the same to any pay or emolument by reason thereof.

§ 23. There shall be enlisted in the public guard a sergeant to serve as an ordnance and quartermaster-sergeant at the institute; he shall be borne on the roll of the guard, paid as other soldiers of the guard are paid, and when in service at the institute, be under the control of the officers thereof.

§ 24. The superintendent of the institute may enlist musicians for service on that post, to be paid out of the annual appropriation heretofore provided.

Title 12.

PUBLIC REVENUE.*

CHAP. 35. Assessment of taxes on property.

36. Collection of taxes on property.

37. Mode in which lands returned delinquent for taxes since March, eighteen hundred and thirty-two, are sold therefor, or vested in the commonwealth.

38. Of taxes on licenses.

39. Of taxes on dividends; certain estates of decedents; process in suits; official seals; and deeds, wills and administrations.

40. Prescribing what is to be collected on each subject of taxation.

41. Of the receipts for waste lands, and for fees paid in the land office.

42. The mode of recovering, and enforcing payment into the treasury of public money collected, and debts to the commonwealth generally; with the manner of selling lands taken for such debts, or otherwise acquired by the commonwealth.

43. Mode of recovering fines, and enforcing payment into the treasury of the commonwealth's part.

CHAPTER XXXV.

ASSESSMENT OF TAXES ON PROPERTY.†

SEC.

1. } Number of commissioners of the

2. } revenue.

3. How and when appointed.

4. Who are ineligible.

5. } Their bonds.

6. }

7. } Lists furnished by clerks and re-

12. } gister to commissioner.

13. } As to books and papers which

14. } predecessor had.

SEC.

15. Assistant to commissioner when sick.

16. } Communications from first audi-

17. } tor to commissioners and courts.

18. } Power to remove or re-appoint.

19. }

20. } Rules to govern commissioner in

43. } making out land book.

* The ancient taxing of all people of the colony of *Virginia* was by the poll. See 1 Hen. Stat. 128, 143, 196, 222, 229, 279, 281. The act of 1645, in 1 Hen. Stat. p. 305, 6, reciting that this taxing "hath been found inconvenient, and is become insupportable for the poorer sort to bear," for their relief, enacted, that all public and county levies be raised by equal proportions out of the visible estates in the colony. This was repealed by the act of 1648, in 1 Hen. Stat. 356, which recites that the act of 1645 was only intended for the better support of the war, and no longer to continue in force. All levies were thereafter upon tithable persons by the poll for more than a century, although in 1663 the governor and council expressed the opinion that the most equal way of paying taxes was by laying a levy upon land and not upon heads, and proposed that they should be so laid. 2 Hen. Stat. 204. In 1755, being a time of danger, the taxes were laid on lands as well as tithables. 6 Hen. Stat. 522; 7 id. p. 9, 10. And since then there has generally been a land tax. But the poll tax seems not to have been abolished until 1787. See 12 Hen. Stat. p. 431.

† The acts in 1 R. C. p. 170 to 175, ch. 54, § 3 to 20; p. 175, ch. 55; p. 176, ch. 56; 2 R. C. p. 10, ch. 181; p. 14, ch. 182; p. 15, ch. 183; p. 40, ch. 184, and 1838, p. 9, ch. 6, and the acts amendatory thereof, appear to have been revised when the act of Feb. 24, 1841, (Sess. Acts, p. 5, ch. 2,) was passed, reducing into one the several acts prescribing the mode of ascertaining the taxable property and of collecting the public revenue. Hence the references in the margin of this and the next chapter are chiefly to the act of 1840-41, and subsequent acts amending it.

SEC.		SEC.	
44	} Form of land book.	72	} How books are examined and certified.
46.		79.	
47	} What is to be ascertained in making out book of personal property.	80	} How they are disposed of.
57.		83.	
58	} How commissioner procures information which he is to have in making it out.	84	} Penalties on commissioner for failure in duty.
64.		86.	
65.	Form of book of personal property.	87.	} Commissioner's fees from individuals.
66	} Rules both as to land book and book of personal property.	88.	
69.		89	} Commission's compensation from the state.
70.	} Copies of books made and sworn to.	94.	
71.		95.	} Compensation of the clerk.
		96	
		100.	} After clerk certifies books, how redress is obtained against erroneous assessment.

Appointment and bonds of commissioners of the revenue.

1840-41, p. 6, § 4;
p. 20, § 63.
1841-2, p. 8, ch. 5.
1842-3, p. 17, ch. 8.
1846-7, p. 12, ch.
5, 6,

§ 1. There shall be three commissioners of the revenue for each of the counties of Loudoun and Norfolk; two for each of the counties of Accomack, Albemarle, Augusta, Bath, Bedford, Botetourt, Brunswick, Buckingham, Campbell, Caroline, Chesterfield, Culpeper, Dinwiddie, Frederick, Fauquier, Franklin, Grayson, Greenbrier, Halifax, Hampshire, Hanover, Hardy, Harrison, Henrico, Kanawha, Louisa, Lee, Lewis, Marion, Mecklenburg, Montgomery, Monongalia, Monroe, Nansemond, Ohio, Preston, Prince William, Patrick, Pittsylvania, Rockbridge, Rockingham, Russell, Shenandoah, Southampton, Spottsylvania, Smyth, Scott, Tazewell, Washington and Wythe; one for every other county now existing, or which may hereafter be created; and one for each of the corporations of Richmond, Norfolk, Petersburg, Fredericksburg, Lynchburg, Staunton, Winchester and Williamsburg.

1840-41, p. 6, § 5.

§ 2. In those counties in which there may be more than one commissioner, each shall be for a certain district, the bounds whereof shall be laid off and described, by an order of the county court, and may at any time be changed by such court.

Id. p. 5, § 1; p. 21, § 66.

§ 3. The appointment of commissioner for any county or corporation shall be made annually by the court thereof. It may be made in September, or (if not made then,) in October, without its being necessary in either of those months to summon the justices. If there be a failure then to make the appointment, it shall be made so soon thereafter as convenient, after the justices shall have been summoned for the purpose. A vacancy in the office by death, removal from office, or resignation, may be supplied at any regular term.

Id. p. 6, § 6; p. 21, § 69.

§ 4. No member of the general assembly, officer of the civil government receiving a stated salary, practising attorney, clerk of a court, inspector, ordinary keeper, surveyor, sheriff or collector of any public tax, county or corporation

levy, or any deputy of a surveyor or sheriff, or of such collector, shall be eligible to, or act in, the office of commissioner. Nor shall any person who may have served in the office of sheriff or collector, or as deputy of either, be appointed to the office of commissioner, unless it appear by satisfactory evidence, that he has completed the collection of the public taxes, and duly paid into the treasury all that he is chargeable with on account thereof.

§ 5. Every person appointed commissioner by any court shall give bond, in the penalty of one thousand dollars, before such court. 1840-41, p. 6, § 8. See ante, p. 88, ch. 13, § 8.

§ 6. Within two months after the bond is given, the clerk of the court shall transmit a copy thereof to the first auditor. If any clerk fail to perform this duty, a fine shall be imposed on him, not exceeding one hundred dollars. Id. p. 22, § 71.

Lists furnished by clerks and register to commissioner.

§ 7. The clerk of the court of every county and corporation shall annually, in the month of January, make out a list of all deeds for the partition or conveyance of land, (except deeds of trust and mortgages made to secure the payment of debts,) which may have been lodged in the clerk's office of such court to be recorded (although not fully proved) within the year ending on the thirty-first day of December preceding, which list shall state the date of the deed, when admitted to record, names of the grantors and grantees, the quantity of the land conveyed, and a description of the same. Id. p. 14, § 35.

§ 8. The clerk of every circuit, county and corporation court shall make out a list of all judgments and decrees for the partition or recovery of lands which may have been rendered, and of all lands absolutely devised by wills which may have been recorded, in such court within the same year, which list shall state the date of the decree, the land which is the subject of the partition, and between whom and in what proportions it is divided, and the date of the will containing the devise, when admitted to record, names of the deviser and devisee, and a description of the land devised. Id. § 36.

§ 9. Every list mentioned in either of the two preceding sections shall be delivered by the clerk to the commissioner for his county or corporation; or if there be more commissioners than one, the clerk shall deliver such list to one of them, and to each of the others a copy, or at least of so much thereof as relates to lands within the district of each. If any clerk shall fail, for one month after the expiration of the said year, to perform any of the duties required of him by this section, or either of the two next preceding, he shall for such failure forfeit fifty dollars. Id. § 35.

§ 10. Where any real estate of a decedent shall under his will or by descent pass to any other person or for any other use than to or for the use of the father, mother, husband, 1843-4, p. 9, ch. 3, § 6.

wife, brother, sister or lineal descendant of such decedent, the clerk of the court in which such will is recorded, and the clerk of the court of the county or corporation in which any such real estate is situate, upon ascertaining the fact, shall report the same to the commissioner for the district in which such real estate may be.

1840-41, p. 14,
§ 37.

§ 11. An abstract shall be made out for each county or corporation of all grants issued from the land office within the year aforesaid for lands therein. The register shall direct every such abstract to the commissioner of the revenue for the proper county or corporation; and where in any county there are more commissioners than one, the register shall direct a copy of the abstract for such county to the clerk of the county court for each commissioner therein. The same shall be directed to the proper courthouse and mailed within one month after the expiration of the said year; and the register shall pay the postage and receive credit therefor in his settlements with the auditor.

§ 12. Any party interested may also procure, at his cost, a statement of any such judgment, decree or devise, as is mentioned in the eighth section, and deliver the same to the proper commissioner.

Books and papers of predecessor; assistant commissioner.

1840-41, p. 7, § 9;
p. 21, § 66.

§ 13. The commissioner shall apply for the official books and papers which his predecessor had, to the person in possession thereof, who shall deliver the same on such application. Such person failing so to do shall forfeit one hundred dollars.

Id. p. 21, § 66.

§ 14. The first auditor, upon being informed that any such official book or paper cannot be obtained, may authorize the commissioner to procure a substitute therefor. Any such clerk furnishing the same, may be paid therefor such fees out of the treasury as he might by law charge an individual for similar services.

Id. p. 20, § 65.
1847-8, p. 10, ch.
4, § 3.

§ 15. A commissioner, unable from sickness to perform the duties of his office, may, with the assent of the county or corporation court, employ a person (approved by the court) to assist him. Such person, after taking the proper oaths, may discharge any of the duties of commissioner, and his principal shall be liable for their faithful performance.

Communications from first auditor to commissioners and the courts.

1840-41, p. 22,
§ 72.

§ 16. The first auditor shall furnish each commissioner with copies of the laws defining his duties, and such forms and instructions as he may see cause to give him; the expense whereof, and also of transmitting the same, shall be defrayed out of the treasury on the governor's order.

§ 17. The first auditor shall communicate any instances of the misconduct or neglect of any commissioner, or any evidence of his incapacity furnished by any thing in the auditor's office, in a letter to the clerk of the court by which such commissioner was appointed, which letter the clerk shall lay before the court at the first term after it is received, and also when the appointment of commissioner is about to be made.

Power to remove or re-appoint.

§ 18. Upon any complaint being made of a commissioner by such letter or otherwise, or whenever the court sees cause for so doing, it may order a summons to issue requiring the commissioner to appear before the court at the next term. And after such summons shall have been served on the commissioner by delivering a copy thereof to him, or leaving one at his usual place of abode, at least ten days in either case before the return day thereof, the court may at the term to which it is returned duly executed, consider whether there is sufficient cause for removing the commissioner from his office, and if it shall be of opinion that sufficient cause exists, shall make an order for his removal, stating in the order the cause thereof.

§ 19. Any person may be re-appointed commissioner of the revenue, but no justice shall immediately succeed in office another justice who is resident within the county or corporation.

Making out land book; form thereof.

§ 20. Such changes as may happen within the district of any commissioner, shall be noted by him in his land book, as follows:

§ 21. He shall enter in the said book and assess the value of all lands in his district appearing by the register's abstract to have been granted. If he shall fail to enter any grant (mentioned in the register's abstract) on the first land book made out after the abstract shall have been received by him, he shall for such failure forfeit twenty dollars to the commonwealth, and a like sum to the grantee, which shall be recoverable in a separate proceeding.

§ 22. Real estate purchased in for the commonwealth, at a sale for taxes, shall not be entered in the body of the said book, but in a separate list at the end thereof. When, however, any real estate so purchased appears by the auditor's certificate to have been redeemed, the same shall be replaced in the body of the book, in the name of the former owner or his grantee. When real estate is sold for taxes to individuals, the commissioner shall note on his land book the number of acres so sold, and to whom, but shall continue the land upon his said book in the name of the former owner until the purchaser obtains a deed therefor.

1840-41, p. 14,
§ 35, 36; also p. 9,
§ 18.

§ 23. The lands appearing on the lists or statements mentioned in the seventh, eighth and twelfth sections shall be transferred accordingly on the land book, and charged to the person to whom the transfer is made.

Id. p. 11, § 23, 24,
25.

§ 24. When a tract or lot becomes the property of different owners in several parcels, the value at which the whole had been assessed shall be divided by the commissioner amongst the several parcels, having regard to the value of each parcel compared with that of the whole tract or lot, and the tax upon the whole shall be apportioned accordingly amongst the owners of the different parcels. If any person interested shall be dissatisfied with such apportionment, he may apply to the commissioner to make a re-assessment, and the commissioner shall make the same according to the best of his skill and judgment, after ten days notice of the time thereof to the parties interested, or to such of them as may be in the county or corporation. Any party may, after like notice, apply to the court of the county or corporation to review the commissioner's decision, and it may order his assessment to be corrected.

Id. p. 9, § 16, 26.

§ 25. Every commissioner, in making out his land book, shall correct any mistake made in any entry in the land book of the preceding year. But land which has been correctly charged to one person shall not afterwards be transferred to another without evidence of record, or furnished as aforesaid, that such transfer is proper, except as follows:

§ 26. When the owner dies intestate, the commissioner may ascertain who are the heirs of the intestate, and charge the land to such heirs. Where the owner has devised the land absolutely, the commissioner may charge the land to such devisee. If, under the will, the land is to be sold, the land shall continue charged to the decedent's estate until a transfer thereof.

1840-41, p. 9, § 22.

§ 27. If land lying in one county, corporation or district, be erroneously assessed in another, the commissioner on whose book it is erroneously assessed, shall certify the owner's name and the quantity, description and value of the land to the proper commissioner, who shall enter the same on his book and charge the tax thereon; and the commissioner on whose book it was erroneously entered, shall strike the same therefrom, upon being advised of the entry thereof by the proper commissioner.

Id.

§ 28. Land lying partly in one county and partly in another shall be entered by the commissioner of the county in which the greater part lies. And when new buildings are erected, of the value of one hundred dollars or more, upon that part of the land lying in the county in which it is not assessed, the commissioner on whose book it is entered shall assess and add the value of such buildings as in other cases.

Id.

§ 29. Where land which lies partly in one county and partly in another, is assessed in the county in which the greater part lies, if the owner thereof shall convey that portion (or any part

thereof) lying in the county wherein the same is not assessed, the commissioner of the revenue of the latter county shall enter upon his land book what is so conveyed, and certify the owner's name, and the quantity, description and valuation thereof to the commissioner of the county wherein the whole was before assessed, who shall strike the part so conveyed from his land book.

§ 30. When the commissioner shall ascertain that there is any patented land in his district which has not before been entered on his book, or after being entered has, from any cause, been omitted for one or more years, he shall make an entry thereof, and of the name of the owner, and if there be no assessment of the same, shall proceed to make such assessment, to the best of his judgment, by reference to the assessed value of contiguous lands similarly situated, and shall charge on the land which he so enters taxes at the rate imposed by law, from the year eighteen hundred and thirty-two inclusive, if the patent emanated before that time, and if it did not, then from the date of the patent, together with lawful interest on each year's tax till paid. ^{1840-41, p. 10, § 20, 21; p. 14, § 35.}

§ 31. The preceding section shall not, however, be construed to subject a *bona fide* purchaser of such land to the arrears of said tax, except from the date of his title thereto. Neither shall it be construed to release any lands west of the *Alleghany* mountains which have been forfeited, or which may be liable to forfeiture for not having been entered on the land book and charged with taxes prior to the said year eighteen hundred and thirty-two. ^{Id.}

§ 32. Each commissioner, before making out his land book, (and when he takes the list of taxable personal property,) shall carry with him the book of the preceding year, and the entry of lands charged to any person resident or having an agent within his district shall be shewn to such person or his agent, who shall be required to state on oath whether the same be correctly entered, whether any part thereof ought to be transferred to any other person, and if so, to whom, and the nature of the evidence to authorize such transfer; also to state whether any other land within the district ought to be charged to such resident or non-resident, and to describe the same, as well as to give a description of any of the lands charged to such resident or non-resident which may not be correctly entered. And the commissioner shall make such use of the information so obtained as he can properly make, consistently with the other provisions of this chapter. Any such resident or agent failing to comply with such requisition shall forfeit fifty dollars. ^{Id. p. 9, § 14, 15.}

§ 33. Each commissioner, before making out his land book, shall assess the value of any old building omitted by the assessors, and of any building newly erected upon land on his book. And where any such building not theretofore assessed, whether old or new, is found to be of the value of ^{Id. p. 14, § 40, 41.}

one hundred dollars or upwards, (valuing the same as nearly as may be at the same rate at which other buildings in the same neighbourhood were valued by the assessors under the previous general assessment,) the value thereof shall be added to the value at which the land was before charged.

1840-41, p. 14,
§ 40, 41.

§ 34. No new building shall be assessed until it be so far finished as to be fit for use. But it shall then be assessed, whether entirely finished or not, at the same value as if it were finished upon the plan on which it is designed.

Id. § 42.

§ 35. Any building which may have been increased in value to one hundred dollars or upwards, by repairs or additions thereto, shall be assessed in the same manner as a new building.

Id. § 40, 41.

§ 36. When from natural decay, or other cause, any building which may have been assessed shall be either wholly destroyed or reduced in value below one hundred dollars, the commissioner shall deduct from the charge against the owner the value at which such building may have been assessed.

Id. p. 7, § 2.

§ 37. The commissioner, in assessing the value of manufacturing or other mills, shall ascertain the value of all machinery and fixtures attached thereto, and include the same in the amount of improvements charged to the owner thereof.

Id. p. 8, § 11, 12.

§ 38. He shall assess the yearly rent or value of improved lots in any city or town occupied by the proprietor or rented out, but shall place and retain on his book the fee simple value of the same as ascertained under the last general assessment.

Id. § 12.

§ 39. Such yearly rent or value shall, when the lot and house are rented or leased out, be ascertained by the rent agreed to be paid by the tenant; and either the proprietor or tenant, or both, shall, when applied to by the commissioner, state on oath the amount of such rent. If either of them, when so applied to, shall refuse so to state the same, he shall forfeit a sum not exceeding three hundred dollars.

Id.

§ 40. The yearly rent or value, when the house and lot are occupied by the proprietor, shall be ascertained by a comparison of the value thereof with that of other houses and lots actually rented. If the proprietor shall think himself aggrieved by the commissioner's valuation, he may appeal to the court by which the commissioner was appointed; and the judgment of such court in the matter shall be final.

Id. § 11.

§ 41. The commissioner shall place and retain on his book the assessed value of all improved lots in any city or town not occupied by the proprietor, or rented or leased out, as well as of all unimproved lots in any such city or town. And the tax on the same shall be estimated according to such assessed value, at the same rate which shall be paid on lands in the country.

1843-4, p. 9, ch. 3,
§ 1, 2.

§ 42. Where any real estate of a decedent, of greater value than two hundred and fifty dollars, shall, by descent or devise, pass to any other person, or for any other use than to

or for the use of the decedent's father or other relations enumerated in the tenth section, the commissioner shall, in addition to the annual land tax imposed upon such real estate, charge thereon such specific tax as may be imposed by law in the case of such devise or descent.

§ 43. No tax shall be assessed or collected on any property belonging to any county, city or town used for public purposes; nor upon any church or house for divine worship, public burying ground or college, free school or any incorporated academy, or upon the property of, or any servants hired for, the university of *Virginia* or the *Virginia* military institute, or the institution for the education of the deaf and dumb and of the blind, or the Eastern or Western lunatic asylum. 1840-41, p. 8, § 12
1846-7, p. 16, ch. 5
§ 5.

§ 44. The commissioner shall make out his land book in such form as the first auditor may prescribe, shewing in one table the tracts of land and in a separate table the town lots. 1840-41, p. 7, § 10.

§ 45. In the table of tracts of land the commissioner shall enter each tract separately, and shall set forth in as many separate columns as may be necessary, the name of the person who by himself or his tenant has the freehold in possession, his place of residence, the nature of his estate, whether in fee or for life, the number of acres in the tract, the name of the tract, if it has a name, and a description of it with reference to contiguous tracts, or to the water courses, mountains or other places on or near which it lies, the distance and bearing from the courthouse, the value of the land per acre, including buildings, the value of the land and buildings, the sum included in the value on account of buildings, the amount of tax on the whole tract at the legal rate, and from whom, when and how the owner derived the land, where this is known, with a note and explanation of any alteration made from the preceding book, shewing why and upon what authority it was made. 1d.

§ 46. In the table of town lots he shall enter separately each lot, and shall set forth, in as many separate columns as may be necessary, the name of the person, his residence and estate, as in the table of tracts of land, charging lots leased for a term of years on ground rent, including all improvements thereon, not to the lessee, but to the tenant for life or fee simple owner under whom the lessee holds. The commissioner shall set forth in other columns, the number of each lot in the town, with the name of the town, if not previously placed in the caption or heading of the table; a description, where the person does not own the whole lot, of the part which he owns; the value of the buildings on the lot; the value of the lot, including buildings; the yearly rent of the lot and buildings; the amount of tax at the legal rate; and like notice of the source of the title, and explanation of alterations, as in the table of tracts of land. 1d.

Making out book of personal property; form thereof.

1845-6, p. 1, ch.
1, § 1, 4.

§ 47. Each commissioner shall ascertain all the property in his district of the following description subject to specific taxes, to wit: all the slaves above the age of twelve years, all the horses, mares, mules, asses and colts, (other than stallions and jackasses let to mares,) every gold watch, every patent lever or lepine silver watch, every silver or metallic watch, (other than gold or patent lever or lepine aforesaid,) every brass or other metallic clock, (whether wholly of metal or only in part,) and every other clock, not including, however, any watch or clock kept in a shop or manufactory for sale.

Id.
1846-7, p. 8, 9,
ch. 2.
1847-8, p. 3, ch. 1,
§ 1.

§ 48. He shall ascertain all the property (and the value thereof) in his district, of the following description, subject to taxes according to the value, to wit: all the gold or silver plate, whether in use or not, which any person owns, over the value of fifty dollars, other than plate kept in a shop or manufactory for sale; every riding or pleasure carriage, whether four wheeled or two wheeled, and whether a stage coach, jersey wagon, carryall, gig or buggy, or called by any other name, with the harness belonging thereto; and every piano forte, harp and unlicensed billiard table.

1840-41, p. 18,
§ 54.

§ 49. He shall further ascertain the number of white male persons above sixteen years of age, and the number of slaves above that age which are subject to county levies.

1842-3, p. 9, § 6.

§ 50. The value of the plate shall be fixed by the commissioner at one dollar per ounce avoirdupois weight. In ascertaining the weight of silver plate, the commissioner shall make no allowance or deduction for any appendage or part of the article so valued, although the same may be of wood, ivory or other material not silver.

1840-41, p. 17, § 51.

§ 51. The value of the property mentioned in the forty-eighth section, other than plate, the commissioner shall ascertain by actual view and examination. Where he has not full confidence in his judgment, as to the value of the property, he shall call upon two freeholders and administer an oath to them that they will impartially appraise the same at its fair market value. And the commissioner shall place the same on his books of taxable property, agreeably to such appraisement, and note therein opposite to the owner's name, that the value was ascertained by two freeholders.

1843-4, p. 10, ch.
3, § 4.

§ 52. The commissioner shall ascertain from each person residing in his district, the amount of interest or profit which may have been received by such person or been converted into principal, (so as to become an interest-bearing subject,) or otherwise appropriated, within the year next preceding the first day of February, whether arising from money loaned or from bonds, notes or other securities for money, acquired by purchase, or from bonds or certificates of debt of this or any other state in the Union, or any foreign state, or of any public cor-

poration created by this, or any other state, except such interest or profit as is exempt by law.

§ 53. He shall ascertain from each person residing in his district the amount of his yearly income in money, during the same year, over and above four hundred dollars, in consideration of the discharge of any office or employment in the service of this state, other than the office of an officer of government receiving a salary out of the treasury, or in consideration of the discharge of any office or employment in the service of any corporation created by this state, other than the *Richmond* fire association, or in the service of any company, firm or person, except where the service is that of a minister of the gospel, or is one of labour in some mechanic art, trade, handicraft or manufacture. ^{1842-3, p. 9, § 5.} ^{3 Grat. 645.}

§ 54. He shall ascertain the practising attorneys at law, (designating such as practise in the court of appeals,) physicians, surgeons and dentists residing in his district; and shall also ascertain from every other person residing therein the amount of all fees, over and above four hundred dollars, derived by him from any office, calling or profession. ^{1842-3, p. 7, ch. 2; p. 10, ch. 13.} ^{1847-8, p. 8, ch. 1, § 5.}

§ 55. He shall ascertain all toll bridges and ferries in his district, the yearly rent or value whereof exceeds one hundred dollars. If the same be rented or leased out, the commissioner shall be governed by the actual rent. Otherwise the commissioner shall make a just estimate of the value. ^{Id. § 8.}

§ 56. The preceding section shall not apply to any bridge or ferry held by a company whose works and profits are by its charter exempt from any public tax, or by a company, the dividends upon whose profits are subject to tax under chapter thirty-nine.

§ 57. The commissioner shall ascertain all the incorporated joint stock companies located or transacting business within his district, which are authorized by their charters to declare dividends of profits amongst the stockholders, (except companies whose profits are exempt by their charters from public tax,) and shall return to the first auditor a list thereof, setting forth in such list the names of the principal officers or agents of each company, and the dividends declared by it during the year next preceding the first day of February. ^{1842-3, p. 7, ch. 2, § 1.}

§ 58. Each commissioner shall begin annually on the first day of February, and proceed without delay to ascertain all the persons and personal property in his district which are subjects of taxation, or county levies, and obtain all the information which he is required to procure. ^{1840-41, p. 15, § 43.}

§ 59. To ascertain and obtain the same, he shall call upon every person in his district, having such property in his possession or care, for a list thereof, and upon every person therein chargeable with taxes or county levies, for a list of the subjects on account of which he is chargeable, and may apply to any officer or agent of a company, or to any person interested therein, and may administer an oath to any person to make ^{Id. p. 15, § 44.} ^{1842-3, p. 8, ch. 2, § 1; p. 10, § 10.}

true answers to such questions as he may ask him in relation to any matter about which the commissioner is authorized to enquire. A commissioner failing to make any call required by this section shall forfeit fifty dollars.

1840-41, p. 15, § 43.
1847-8, p. 11, ch.
4, § 5.

§ 60. Each list shall be read over by the commissioner to the person from whom it is obtained, or on whose information it is made out, and shall be corrected in such respects as may be necessary. The commissioner shall endeavour, by asking proper questions and obtaining answers thereto, to have in such lists a correct and full statement of the persons and personal property in his district subject to taxation or county levies which were in the possession or care of each person in such district, on the first day of February, and of all the other subjects before mentioned, on account of which any person or company in his district was then chargeable. The answers to the commissioner's questions shall always be on oath. A commissioner failing to administer such oath shall forfeit five dollars.

1840-41, p. 15, 16,
§ 44, 45, 50.

§ 61. Every person chargeable with taxes or county levies, who may be absent from his residence at the time the commissioner calls, shall, before the first of June, furnish the commissioner with such lists (verified by affidavit) as it would have been his duty to furnish if the commissioner had seen him at his residence. A person failing to perform this duty shall forfeit ten dollars.

Id. p. 16, § 45.

§ 62. If any person shall, when applied to by the commissioner, refuse to furnish a list, or the means of making out a list, or to take such oath as is hereinbefore required, or refuse to answer, or answer untruly, any question lawfully asked him by the commissioner, such person shall, for every such offence, pay a fine of not less than twenty nor more than one hundred dollars.

Id.

§ 63. Where the commissioner, in consequence of the failure or refusal of any person to do what is required of him, is unable to obtain from or through him such list, the commissioner shall proceed to make it out from the best information he can otherwise obtain.

Id.

§ 64. When any list, in consequence of such failure or refusal, is obtained or made out too late to be placed upon the commissioner's book of personal property for the year in which it is so obtained or made out, it shall be entered upon the book of the next year along with the list of the next year, and there shall be added to the tax or levy omitted, lawful interest upon the amount thereof, for one or more years, as the case may be.

1840-41, p. 17,
§ 51, 54.
1841-2, p. 166,
No. 1.
1845-6, p. 1, ch. 1.

§ 65. Each commissioner shall make a book containing the names of the owners of property and other persons taxed or subject to levies, alphabetically arranged, shewing in separate columns opposite to their names the dates of receiving lists from them, the number of free males in the family of each person above sixteen years of age, the number of his slaves above that age, and giving information in such form as the first

auditor may prescribe, as to all persons and subjects on which taxes may be assessed. Opposite to the name of each person shall be extended the whole amount of public tax due from him.

Rules both as to land book and book of personal property.

§ 66. He shall add up the columns of figures on each page so as to shew at the bottom of each the total number of persons and articles subject to taxation, with the amount of the public tax due on every thing contained in such page; and at the end of each book he shall enter the sums from the bottoms of the respective pages by reference thereto, so as to present at one view the various species and total number of the subjects of taxation within his district, and the total amount of the revenue arising therefrom. 1840-41, p. 18, § 55.

§ 67. The land of any decedent shall be charged to his estate, until it can be properly charged to the heir, devisee or grantee. And the personal property of the decedent shall be likewise charged to his estate until the same be disposed of. While either continues charged to the estate, the personal property shall be liable for the tax on all so charged, and subject to distress or other lawful process for the recovery of the same. Any assets in the hands of the personal representative of the decedent shall be likewise liable therefor. Id. p. 9, § 17.

§ 68. The commissioner shall make a particular report on oath to the court which appointed him, of all his own property subject to taxes or levies, shewing the whole amount chargeable to him therefor. On his book his property shall be entered and taxes and levies charged to him in like manner as to any other person. For failing to perform any duty required by this section he shall forfeit one hundred dollars. Id. p. 17, § 53.

§ 69. In any case in which, in consequence of there being no commissioner for a former year, or from any other cause, no book was made out of the land tax, or of the tax on personal property, or of those subject to levy in any district for that year, the commissioner of such district shall proceed to make out books for such year, according to the rate of tax or levy which then existed, as well as books for the current year. The like proceedings shall be had with and under the books of such former year as with those of the current year, and the sums therein charged shall be collected and accounted for in like manner. Id. p. 60, § 19.

§ 70. The commissioner, after completing his land book and his book of personal property, shall make three fair copies thereof. At the foot of each copy he shall make and subscribe the following oath: *I A. B., commissioner of the revenue for the county (or corporation) of _____, do swear, that in making out the foregoing book I have, to the best of my knowledge and ability, pursued the laws prescribing the duties of a commissioner of the revenue.* And the justice before whom Id. p. 13, § 32
p. 17, § 54; p. 18, § 57.

the oath is taken shall annex thereto the following certificate: *Sworn to before me, C. D., a justice for the county (or corporation,) of* , *on the* day of

Which certificate shall be subscribed by the justice. The oath at the foot of the copy of the land book shall contain these additional words: *and that I have faithfully discharged the duties required of me in assessing improvements upon lands, and have made all corrections in said book as required by law.*

1840-41, p. 18, § 54.

§ 71. The original of each book shall be retained by the commissioner so long as he continues in office, and then be delivered to his successor.

Id. p. 12, § 27, 29, 32, and p. 18, § 54.

§ 72. The three copies of each book sworn to as aforesaid, together with such lists as the commissioner may have taken from individuals, shall be delivered by the commissioner to the clerk of the court (by which he was appointed) for examination.

Id.

§ 73. Within twelve days after they shall have been received by the clerk, he shall examine the same.

Id.

§ 74. He shall compare each copy of the land book with the land book of the preceding year, with the records of his office, where necessary, and with such transcripts, abstracts or statements from the records of other offices, as the commissioner shall lay before him.

Id. and p. 12, § 30.

§ 75. He shall compare the book of personal property with the lists taken by the commissioner from individuals, and examine the same in such other way as the records of his office and his information will enable him to do.

Id. p. 12, § 27, 28.

§ 76. The commissioner shall attend at the clerk's office and assist at the examination, so far as may be desired by the clerk; and the clerk shall point out to the commissioner such errors (if any) as in his opinion may exist in any of the books. Every such error shall be corrected, where the commissioner and the clerk concur as to the propriety of such correction. Where they differ, the matter in difference shall be submitted to the attorney for the commonwealth in the court by which the commissioner was appointed, and they shall conform to his decision. If he fail to decide the matter before the next term, it shall then be submitted to and decided by such court, and the books shall be made to conform to such decision.

Id. p. 12, § 29.

§ 77. When the examination of the clerk is completed, he shall annex to each copy of the land book a certificate to the following effect: *I, E. F., clerk (or deputy clerk,) of the court for the county (or corporation) of* , *do hereby certify that I have carefully examined the foregoing land book; that I have compared it with the land book of the preceding year, with the records of my office where necessary, and with such lists, abstracts or statements from the records of other offices, as the commissioner laid before me, and that I find the same correct, (or, and that such errors as were found in the book when it was delivered to me, have been corrected according to law.) Given under my hand this* day of

§ 78. At the foot of each copy of the book of personal property, the clerk shall make such certificate as the result of his examination will justify. He shall state whether the book appears to him to be correct, or whether it appears to be incorrect or carelessly made out. His certificate shall be laid before the court at the succeeding term, and recorded among the proceedings of the court. ^{1840-41, p. 12, § 30.}

§ 79. If the clerk fail to perform any of the duties above required of him, he shall forfeit one hundred dollars. ^{Id. p. 12, § 31.}

§ 80. One copy of the land book, and one of the book of personal property, shall be preserved by the clerk amongst his records, free for the inspection of any person, and a copy of either or any part thereof may be had at the charge of any person desiring the same. The copy of the book of personal property preserved by the clerk shall also serve for laying the county levy. ^{Id. p. 13, § 32; p. 18, § 54.}

§ 81. One copy of each book shall be delivered by the commissioner to the sheriff or other officer authorized to collect the taxes therein assessed, which shall be his guide in collecting the same. ^{Id.}

§ 82. The other copy of each shall be transmitted to the first auditor by the commissioner, with his certificate stating that he has delivered a duplicate thereof to the sheriff or other officer, and the time of the delivery. This copy shall be a guide for the auditor to settle by with such sheriff or other officer. It shall be admitted as evidence in any proceeding for judgment against such sheriff or officer on account of the taxes with which he is chargeable. ^{Id. and p. 19, § 59.}

§ 83. The commissioner may require from the clerk, sheriff (or other officer) and auditor, a receipt or acknowledgment in writing of the delivery of the said books to them respectively. ^{Id.}

Penalties on commissioners; their fees and compensation.

§ 84. If any commissioner shall knowingly make a false or erroneous entry on any of his books, he shall, for every such offence, forfeit two hundred dollars. ^{Id. p. 13, § 34.}

§ 85. If the duty prescribed by the seventy-second section shall not be performed before the first day of June; or if the duty prescribed by the eighty-first section shall not be performed before the fifteenth day of June; or if the duty prescribed by the eighty-second section shall not be performed before the first day of September, the commissioner failing to perform any of these duties shall, for such failure, pay a fine of not less than one hundred nor more than five hundred dollars. And moreover, unless he shall have a reasonable excuse, the first auditor shall suspend the payment of his compensation and report the fact to the general assembly. ^{Id. and p. 19, § 58, 59. 1843-4, p. 12, ch. 5, § 3.}

§ 86. If a commissioner shall, either in his land book or his book of personal property, charge or extend in any case a less tax than the law requires, the first auditor shall deduct the ^{1843-4, p. 12, ch. 5, § 2.}

amount omitted to be charged or extended from the compensation of the commissioner.

1840-41, p. 9, § 18;
p. 10, § 20; p. 11,
§ 25; p. 14, § 37.

§ 87. Each commissioner shall be entitled to the following fees: For making an entry and assessment under the thirtieth section, of any parcel of land, one dollar for every such parcel, to be paid by the owner; for making an assessment under the twenty-fourth section, one dollar, for which the parties amongst whom the land is divided shall be jointly and severally liable, except where the commissioner's proceedings are confirmed by the court, in which case the party complaining shall pay the commissioner's fee in addition to the costs incurred in consequence of the application to the court; for making an entry transferring lands, before charged to one person, unto another, seventy-five cents, which shall be charged to the person to whom the transfer is made, and be a compensation for all the tracts in the commissioner's district conveyed by the same deed; for an entry of any grant according to the twenty-first section, a fee of twenty-five cents from the grantee, and fifty cents from him for assessing the value of the land granted; and for an alteration in the quantity of land, except when made to correct an error of a commissioner, fifty cents, to be charged to the person at whose instance such alteration is made.

Id. p. 10, § 19, 39.

§ 88. The commissioners may make out tickets for their fees, and place them in the hands of a sheriff or other officer, to be collected and accounted for in the same manner that clerks' fees are collected and accounted for. The said commissioners shall be subject to the same penalties as clerks of courts for issuing tickets wrongfully.

Id. p. 20, § 63.
1847-8, p. 11, ch.
4, § 4.

§ 89. Each commissioner or his assistant shall, before the first day of December, produce to the court by which he was appointed, an account of his services, with an oath thereto annexed to the following effect: *I, A. B., commissioner (or assistant commissioner) of the revenue for the county of , swear that I have been faithfully engaged days of the present year in performing my duties as such commissioner.* When the said oath shall have been taken, subscribed and certified, the court shall consider how many days were requisite to perform those services, and enter their opinion upon record as follows: *This day, A. B. produced an account of his services as commissioner of the revenue, and the court have considered that days were requisite for the said commissioner to perform the same.* A copy shall be made out by the clerk, of the commissioner's account and affidavit, and of the order of court thereupon, which shall be transmitted to the first auditor. And the said commissioner shall have two dollars per day for each day so considered requisite, which shall be paid by warrant on the treasury.

1840-41, p. 20,
§ 63.
1844-5, p. 12, ch. 6.

§ 90. The preceding section is subject to the following qualifications: not more than three hundred dollars a year shall be paid to the commissioner for the city of *Richmond*, nor more

than two hundred dollars a year to the commissioner for the county of *Jefferson*, nor more than two hundred dollars a year to any commissioner in either of the counties of *Alexandria*, *Amherst*, *Berkeley*, *Cumberland*, *Fairfax*, *Fauquier*, *Frederick*, *Goochland*, *Isle of Wight*, *King and Queen*, *Lunenburg*, *Nelson*, *Orange*, *Princess Anne*, *Prince Edward*, *Stafford and Sussex*; nor more than one hundred and twenty-five dollars a year to either of the commissioners of the county of *Kanawha*; nor more than one hundred dollars a year to any commissioner in either of the counties of *Bath*, *Botetourt*, *Culpeper*, *Hardy*, *Harrison*, *Lee*, *Lewis*, *Marion*, *Monongalia*, *Monroe*, *Montgomery*, *Preston*, *Russell*, *Scott*, *Smyth*, *Tazewell* and *Wythe*; nor more than seventy-five dollars a year to either commissioner in the county of *Grayson*, or to the commissioner for *Staunton* or *Williamsburg*.

§ 91. A sum not exceeding four hundred dollars a year, may be apportioned among the commissioners of *Loudoun* county; three hundred dollars a year among the three commissioners of *Norfolk* county; two hundred and fifty dollars a year between the two commissioners of *Frederick* county; two hundred dollars a year between the two commissioners of each of the counties of *Prince William* and *Patrick*.

§ 92. The allowance to any commissioner in any county not mentioned in the two preceding sections, whether now existing or hereafter created, or in any corporation not mentioned therein, shall not exceed one hundred and fifty dollars a year.

§ 93. Where, however, any commissioner makes out books for a former year, such compensation may be allowed him, in addition to what he is entitled to for his services during the current year, as he would have received in a former year, had he then been appointed and performed the duties of commissioner.

§ 94. When one commissioner begins in any year, and dies or is removed before the services, to be rendered by the commissioner in that year, are fully performed, in consequence whereof another is appointed who completes the same, the sum to be paid for the whole services of the commissioners in that year, shall be apportioned between the commissioner last appointed and the former, according to the services by them respectively performed. If, however, in consequence of any failure to deliver up books or papers which the former had, the latter has to proceed to take the list of taxable property, and do all that he would have had to do in case there had been no previous commissioner that year, then he shall receive all the compensation for the said year.

Compensation of the clerk.

§ 95. The court of the county or corporation shall make an allowance to the clerk for his services under this chapter, which shall be paid out of the treasury. Where there is only one commissioner, the allowance shall not exceed fifteen

dollars a year. Where there are two, it shall not exceed twenty-five dollars a year. And where there are three, it shall not exceed thirty-five dollars a year.

Redress against erroneous assessment.

1840-41, p. 13,
§ 33.

§ 96. After the clerk shall have certified the land book, or the book of personal property, no alteration shall be made in either by the commissioner, affecting the taxes of that year.

Id.
1844-5, p. 9, ch. 2.

§ 97. But any person aggrieved by any entry in either book, may, within one year after the date of the clerk's certificate, apply for relief to the court by which the commissioner was appointed. The attorney for the commonwealth shall defend the application; and no order made in favour of the applicant, shall have any validity unless it be stated on the face thereof that such attorney did so defend it.

Id.

§ 98. If the court be satisfied that the applicant is erroneously charged on such book with any taxes, it shall order that he be exonerated from the payment of so much as is erroneously charged, if not already paid, and if paid, that it be refunded to him.

Id.

§ 99. Such order delivered to the sheriff or other officer, shall restrain him from collecting so much as is thus erroneously charged; or if the same has already been collected, shall compel him to refund the money, if such officer has not already paid it into the treasury; and either way, it shall be a sufficient voucher to entitle the officer to a credit for so much in his settlement with the first auditor.

Id.

§ 100. If what was so erroneously charged has been paid into the treasury, the order of court shall entitle the claimant to a warrant on the treasury for the amount thereof, provided application for the same be made to the first auditor within two years after the date of the clerk's certificate.

CHAPTER XXXVI.

COLLECTION OF TAXES ON PROPERTY.

SEC.

1. Who collects taxes.
2. When collection begins.
3. When payment may be made at the treasury in advance.
4. } When taxes may be distrained for.
5. }
6. }
7. } When and on what distress may
10. } to be made.
11. } Remedy without distress, where
13. } to party owing taxes has estate in
14. } another's hands.
15. } Where one pays taxes which an-
15. } other or his estate should pay.

SEC.

16. } Lists returned of uncollected taxes.
19. }
20. Penalties on sheriffs for false lists.
21. Credits to sheriff for amount of lists.
22. When sheriff must pay into the treasury.
23. Commissions of sheriff.
24. } Liability of sheriff who is in de-
25. } fault.
26. } Auditor may appoint collector of
27. } arrears of taxes.

Who collects them; when and how.

§ 1. The taxes assessed in any county under the provisions of the thirty-fifth chapter, shall be collected by the sheriff thereof, with the following exceptions. The sergeants of the cities of *Norfolk* and *Williamsburg* shall be collectors of the taxes assessed in their respective cities. Ante, p. 178, ch. 35.

§ 2. Each sheriff or collector shall commence his collection yearly on the first day of July, or so soon thereafter as he may receive a copy of the commissioner's books. 1840-41, p. 19, § 59; p. 22, § 73.

§ 3. A person not residing in the county in which his land may lie, may, before the first day of August in any year, pay into the treasury in advance the taxes assessed on such land for that year, upon a certificate of the first auditor, for which a fee of fifty cents shall be paid to that officer. A list of such payments shall be transmitted by the first auditor, immediately after the first day of August, to the sheriffs or collectors of the counties wherein such lands shall be situated, who shall be governed accordingly. 1831-2, p. 66, § 27

§ 4. If the taxes with which any person or any estate of a decedent is assessed, be not paid before the first day of September, the sheriff or collector may distrain. 1840-41, p. 23, § 73, 78.

§ 5. On affidavit before a justice, by the sheriff or collector, that he has good cause to suspect, and verily believes, that a person assessed with taxes intends to remove his property out of the county or corporation, and that in his opinion it is probable such taxes will be lost, unless he be authorized to distrain therefor before the first of September, it shall be lawful for the justice to give such authority. Id. p. 24, § 81.

§ 6. No distress shall be made for taxes, where the sheriff or collector has had more than two years to collect the same. Id. § 82.

§ 7. Any goods or chattels in the county or corporation, belonging to the person or estate assessed with taxes, may be distrained therefor. Id. p. 23, § 78.

§ 8. The goods and chattels of the tenant or other person in possession, claiming under the party or estate assessed with taxes on land, may be distrained if found on the premises. But when taxes are assessed wholly to one person, on a tract or lot part of which has become the freehold of another, by a title recorded before the commencement of the year for which such taxes are assessed, the property belonging to the owner of that part, shall not be distrained for more than a due proportion of the said taxes. Id.

§ 9. Where taxes are assessed on a tract of land lying partly in one county and partly in another, the sheriff of the county in which the taxes are so assessed, may distrain on that part of the land lying in the other county, in the same manner as if such part was in his own county. Id. p. 24, § 83.

§ 10. No deed of trust or mortgage upon goods or chattels, shall prevent the same from being distrained and sold for taxes assessed against the grantor in such deed, while such Id. p. 23, § 77. 1842-3, p. 12, ch. 4, § 1.

goods and chattels remain in the grantor's possession; nor shall any such deed prevent the goods and chattels conveyed from being distrained and sold for taxes assessed thereon, no matter in whose possession they may be found.

1842-3, p. 12, ch.
4, § 2.

§ 11. Where the officer cannot find sufficient goods or chattels to distrain for taxes, any person indebted to, or having in his hands estate of the party assessed with such taxes, may be applied to for payment thereof out of such debt or estate, and a payment by such person of the said taxes, either in whole or in part, shall entitle him to a charge or credit for so much on account of such debt or estate against the party so assessed. If the person applied to, do not pay so much as it may seem to the officer ought to be recovered on account of the debt or estate in his hands, the officer shall, if the sum due for such taxes exceed not twenty dollars, procure from a justice a summons, directing such person to appear before some justice at such time and place as may seem reasonable; and if the sum due exceed twenty dollars, shall procure from the clerk of the court of the county or corporation a summons, directing such person to appear before the court of the county or corporation on the first day of the next term thereof. And from the time of the service of any such summons, the said taxes shall constitute a lien on the debt so due from such person, or on the said estate in his hands.

1842-3, p. 12, ch.
4, § 2.

§ 12. If such summons be returned executed and the person so summoned do not appear, judgment shall be entered against him for the sum due for such taxes, and for the fees of the clerk and of the officer who may execute the summons.

Id.

§ 13. If the person so summoned appear, he shall be interrogated on oath, and such evidence may be heard as shall be adduced, and such judgment shall be rendered as upon the whole case shall seem proper.

Where one pays taxes another should pay.

1840-1, p. 23,
§ 79.

§ 14. A tenant from whom payment shall be obtained by distress or otherwise, of taxes due from a person under whom he holds, shall have credit for the same against such person out of the rents he may owe him, except where the tenant is bound to pay such tax by an express contract with such person.

Id.

§ 15. Where a tax is paid by a fiduciary on the interest or profits of moneys of an estate laid out, or invested either under an order of court or otherwise, the tax shall be refunded out of such estate.

Lists returned of uncollected taxes.

1831-2, p. 61, § 10.
1840-41, p. 25,
§ 91, 92, 93.

§ 16. The sheriff, or other collector, after ascertaining which of the taxes assessed in his county or corporation cannot be collected, shall, as soon as practicable, in each year, after the first day of October, make out lists of three

classes, to wit : first, a list of property on the commissioner's land book improperly placed thereon or not ascertainable, with the amount of taxes charged on such property ; secondly, a list of other real estate which is delinquent for the non-payment of the taxes thereon ; and thirdly, a list of such of the taxes so assessed, other than on real estate, as he is unable to collect.

§ 17. In the lists mentioned in the preceding section, the names of the persons charged with the taxes shall be placed alphabetically. The list mentioned secondly shall be in the following form : 1831-2, p. 61, § 10.
1840-41, p. 25,
§ 91, 92, 93.

List of real estate in the county of _____, delinquent for the non-payment of taxes thereon for the year _____.

Name of person.	Residence.	Estate held.	Quantity of land.	Description and local situation of land.	Distance and bearing from courthouse.	Amount of taxes.	Why returned delinquent.

And the sheriff or collector returning such list shall, at the foot thereof, subscribe the following oath : *I, A. B., sheriff, (or deputy sheriff,) of the county of _____, do swear that the foregoing list is, I verily believe, correct and just ; that I have received no part of the taxes for which the real estate therein mentioned is returned delinquent ; and that I have used due diligence to find property within my county liable to distress for the said taxes, but have found none.*

§ 18. The lists mentioned first and thirdly in the sixteenth ^{1a.} section, shall each of them be verified by the oath of the sheriff or collector ; and a copy of that thirdly mentioned shall be posted at the front door of the courthouse of the county or corporation on a court day, during the term next preceding that at which the list may be presented to the court under the following section :

§ 19. Each of the said lists shall be presented to the court ^{1a.} of the county or corporation and examined by the court. The court being satisfied of the correctness of the said lists, or having corrected them, if erroneous, shall direct the clerk to certify copies thereof to the first auditor, and a copy of that first mentioned to the commissioner of the revenue, who shall correct his books accordingly. The original lists shall be preserved by the clerk in his office. After the said copies are so directed to be certified, the sheriff or collector shall not receive any of the taxes mentioned in the said lists, but they may be paid into the treasury, or the personal property tax may be paid to the clerk of the county or corporation, who shall be accountable therefor in like manner and at the same time as for taxes on law process.

See ante, p. 76,
§ 20, ch. 7, as
amended.

1840-41, p. 27,
§ 95.

§ 20. Any officer, who shall return in any such list real estate as delinquent, for the non-payment of taxes, when such taxes, or any part thereof, shall actually have been received by him, shall forfeit, if the return was by design, ten times the amount of taxes so actually received, and if the return was by mistake, twice the amount, one-half of which forfeiture shall in each case be to the commonwealth, and the other half to the person charged with such taxes. And any such officer who shall return in such list any real estate as delinquent, when he had either found, or by using due diligence might have found, sufficient property within his bailiwick, liable to distress for the taxes for which such real estate is returned delinquent, shall forfeit to the commonwealth a sum equal to five times the amount of the said taxes.

Id. p. 26, 27, § 92,
93, 94.

§ 21. The copies of lists directed to be certified to the first auditor, shall be placed by the clerk in a sealed enclosure directed to that officer, and delivered to the sheriff or collector by whom the lists were returned. The auditor shall credit the sheriff or collector with the amount of taxes mentioned in such lists, if the said lists be presented at his office before the first day of May next, after the said taxes were assessed, but not otherwise.

When sheriff to pay into the treasury; his commissions.

Id. p. 19, § 59; p.
22, § 73; p. 29,
§ 103.
1 R. C. p. 291,
§ 28.

§ 22. The taxes collected under this chapter shall be paid into the treasury on or before the fifteenth day of December, in the year in which the same may be assessed, save only as follows: A sheriff or collector, the court-house of whose county or corporation is more than one hundred and fifty miles from the seat of government, shall be allowed in addition one day after the said fifteenth of December, for every thirty miles of such excess. A sheriff or collector who may not have received the books of the commissioner of the revenue before the fifteenth of June, shall be allowed an additional time, corresponding with the period for which the commissioner may have failed to deliver his books to such sheriff or collector. And a sheriff or collector who may not have qualified until after the fifteenth of June, shall have such additional time as shall extend the time of payment to six months from his qualification.

1 R. C. p. 282,
§ 28.
1840-41, p. 22,
§ 74.

§ 23. Every sheriff or collector shall be allowed a commission of five per centum on the amount of taxes with which he is chargeable; and if he shall punctually pay the same into the treasury on or before the said fifteenth day of December, or within the additional time so allowed, he shall be allowed an additional commission of two and an half per centum.

1840-41, p. 23,
§ 76.

§ 24. In case of a failure so to pay, the first auditor may, within one month after such failure, file in the office of the general court, with the clerk thereof, an accurate account of the amount with which any such sheriff or collector may be

chargeable on account of such taxes, and thereupon such clerk shall enter up a judgment against such sheriff or collector, for the amount wherewith he is so chargeable, with lawful interest thereon, from the time of such failure until payment thereof, and fifteen per centum damages in addition thereto, which judgment shall have the same validity, and be subject in all respects to the like proceedings thereupon, as if it had been rendered by the court.

§ 25. In any case of a failure so to pay, proceedings may also be had according to the forty-second chapter. 1840-41, p. 22,
§ 75, 76.
See post, ch. 42.

Auditor may appoint collector.

§ 26. The first auditor may appoint a collector in any county or corporation, to collect arrears of taxes therein, and may allow him a reasonable compensation, to be agreed on (before the service is commenced) and approved by the executive, which compensation shall not exceed twenty per centum on what may be collected. 1820-21, p. 9, ch.
5, § 3.
1840-41, p. 24,
§ 85, 90.

§ 27. Such collector shall have a reasonable time allowed ^{Id.} him by the first auditor, and shall, before he acts, execute a bond approved by the said auditor, conditioned that he will faithfully collect the said arrears of taxes, and account for and pay the same into the treasury within the time so allowed. The said bond shall remain filed in the auditor's office.

CHAPTER XXXVII.

MODE IN WHICH LANDS RETURNED DELINQUENT FOR TAXES
SINCE MARCH, EIGHTEEN HUNDRED AND THIRTY-TWO*, ARE
SOLD THEREFOR, OR VESTED IN THE COMMONWEALTH.

SEC.		SEC.	
1.	Lien on real estate for taxes; record of such as is delinquent; and mode of paying taxes thereon.	16.	} How deed is obtained.
2.	List of what is delinquent sent to sheriff every five years.	21.	
3.	Advertisement by sheriff.	22.	Effect of sale and conveyance.
4.	} When, where and how land is sold for taxes.	23.	Privileges allowed persons under disabilities.
5.		24.	} Where land is purchased by commonwealth for taxes.
6.		25.	
7.	} Receipt for purchase money.	26.	How land so purchased by commonwealth may be redeemed.
8.		27.	How land purchased by commonwealth and not redeemed, is sold.
9.	} Return by sheriff of his sales.	28.	} How auditor ascertains amount chargeable to sheriff for land sold.
10.		29.	
11.	} Within what time and how land sold may be redeemed.	30.	} When sheriff is to pay proceeds of sales into the treasury; and what commissions are allowed him.
12.		31.	
13.	} How land sold and not redeemed is surveyed and laid off.	32.	
14.			
15.			

* See post. ch 114, as to lands forfeited for the non-payment of taxes thereon for 1831, or any year previous thereto, or for the failure of the owners thereof to have the same entered on the books of the commissioners of the proper counties, and charged with such taxes.

Lien on real estate for taxes; how enforced by sale of land; record of such as is delinquent; and mode of paying taxes thereon.

1831-2, p. 61, § 8.
1840-1, p. 29,
§ 104; p. 27, § 96.
1843-4, p. 10, § 3.

§ 1. There shall be a lien upon all real estate for the taxes assessed thereon, and interest upon such taxes, at the rate of six per centum per annum, from the fifteenth day of December, in the year in which the same may have been assessed, until payment thereof. The first auditor shall keep a record of all real estate which since the tenth day of March eighteen hundred and thirty-two, shall have been, or hereafter shall be returned delinquent for the non-payment of taxes. Until a sale thereof as hereinafter mentioned, any person may, upon a certificate of the first auditor, pay into the treasury the taxes on any such real estate, with interest thereon as aforesaid. For every such certificate, the person obtaining the same shall pay the auditor a fee of fifty cents.

1840-41, p. 27,
§ 96.

§ 2. In the month of April, May or June of the year eighteen hundred and fifty, and in one of those months, every five years afterwards, the first auditor shall cause to be delivered to the sheriff or collector of the taxes for each county and corporation, a list of the real estate therein, which, since the tenth day of March eighteen hundred and thirty-two, shall have been, or hereafter shall be, returned delinquent for taxes, and on which the taxes remain unpaid, with a statement of the amount due for the taxes on each tract or lot so returned, and for interest on such taxes.

1831-2, p. 62, § 11.
1840-41, p. 27,
§ 96.

§ 3. Within twenty days after receiving such list, such sheriff or collector shall make out three copies thereof, and set up one of them at the front door of the courthouse, and the other two at two of the most public places in his county or corporation. To each copy he shall subjoin a notice that the real estate therein mentioned, or so much thereof as shall be sufficient to satisfy the taxes on the same, with interest and commissions of five per cent. to the sheriff or collector, will be sold at public auction between the hours of ten in the morning and four in the evening, on the first day of the next succeeding September or October court of his county or corporation, at the door of the court house thereof, unless the said taxes, interest and commission, shall be previously paid. Such list and notice shall, if ordered by the court of the county or corporation in which such real estate lies, be advertised for four successive weeks in some convenient newspaper; the expense of which, shall be apportioned among the delinquents, according to the amount of taxes due by them respectively.

1831-2, p. 63, § 12.
1840-41, p. 28,
§ 97.

§ 4. If the said taxes, interest and commission, and a due proportion of said expense, be not previously paid, the said sheriff or collector shall proceed to make sale accordingly; and the sale may be adjourned from day to day, and proceed between the hours aforesaid, until it shall be completed. If, however, the sale be not completed on the last day of the court, it shall be adjourned to the first day of the next court.

It may then proceed, and be adjourned in like manner as at the previous term. Whenever there is an adjournment to the next court, notice thereof shall be given by advertisement at the door of the court-house.

§ 5. The sale of tracts of land shall be of each tract separately, or of such quantity or part thereof, as shall be sufficient to satisfy the taxes thereon, with interest and commission as aforesaid, and its proportion of said expense; and the sale of town lots, shall be of each lot separately, or of such undivided interest therein as shall be sufficient to satisfy the taxes thereon, with such interest, commission, and proportion of expense. 1831-2, p. 63, § 13.

§ 6. The sheriff or collector conducting the sale shall not, directly or indirectly purchase any real estate sold. If he does, he shall forfeit fifty dollars for every such purchase, and the same shall moreover be absolutely void. Id. p. 66, § 24.

Receipt for purchase money; return of sales.

§ 7. The sheriff or collector, on receiving from any purchaser the amount of purchase money, shall grant to him a receipt for the same, to the following effect: Id. p. 63, § 15.

Memorandum of real estate within the county (or corporation) of
, sold this day of , eighteen hundred
and , for the non-payment of taxes thereon, for the
year .

Name of person charged with the taxes.	Quantity of land charged.	Local description of land.	Amount of taxes due.	Quantity of land sold.	Name of purchaser.	Amount of purchase money.

Received of the above sum of , it
being the amount of purchase money for the land mentioned in the
above memorandum.

§ 8. For a receipt made out according to the said form, and signed by the sheriff or collector, he shall be entitled to receive from the purchaser twenty-five cents. Id. p. 64, § 16.

§ 9. The sheriff or collector shall make out a list of the sales, with the following caption thereto: *List of real estate* Id. § 17. 1840-41, p. 28, § 99.
within the county (or corporation) of sold in the month
(or months) of , eighteen hundred and , for the
non-payment of taxes thereon for the year .

Underneath shall be the several columns mentioned in the seventh section, with a like caption to each column. And there shall be an additional column shewing the date of each sale, unless the sales were all one day, in which case the day may be mentioned in the caption.

1831-2, p. 64,
§ 17.
1840-41, p. 28,
§ 99.

§ 10. Subjoined to the said list, shall be the following oath:
I, A. B., sheriff (or collector, or deputy,) for C. D., sheriff (or collector) of the county of _____, do swear that the above list contains a true account of all the real estate within my county, which has been sold by me during the present year, for the non-payment of taxes thereon for the year _____; and that I am not directly or indirectly interested in the purchase of any of the said real estate. So help me God.

Which oath shall be subscribed and taken before a justice.

Id.

§ 11. The said list, with a certificate of the said oath attached thereto, shall be returned to the court of the county or corporation, (whose officer may have made the sales,) at the first or second term next after the completion of the said sales. If the court see no cause to doubt the correctness of the list, it shall order a copy thereof to be certified to the first auditor.

When and how land sold may be redeemed.

1831-2, p. 64, § 19.

§ 12. The owner of any real estate so sold, his heirs or assigns, or any person having a right to charge such real estate for a debt, may redeem the same by paying to the purchaser, his heirs or assigns, within two years from the sale thereof, the amount for which the same was so sold, and such additional taxes thereon as may have been paid by the purchaser, his heirs or assigns, with interest on the said purchase money and taxes, at the rate of ten per centum per annum, from the times that the same may have been so paid.

1840-41, p. 28,
§ 100.

§ 13. What is authorized to be paid by the preceding section, may be paid within the said two years, to the clerk of the court of the county or corporation, (whose officer may have sold such real estate,) in any case in which the purchaser, his heirs or assigns, may refuse to receive the same, or may not reside, or cannot be found, in the county or corporation.

Land sold and not redeemed.

1831-2, p. 65, § 21.

§ 14. The purchaser of a part of any tract of land so sold and not redeemed within the said two years, his heirs or assigns, shall have the quantity purchased, surveyed and laid off at his or their expense, by the surveyor of the county; or where there shall be no county surveyor, then by some person to be appointed by the court of the county for that purpose; the said survey to commence on either of the lines of the tract, at the option of the purchaser, his heirs or assigns, so as not to include the improvements on the same, (if it can be avoided,) and to be in one body, the length whereof shall not be more than double the breadth, where that is practicable. A plat and certificate of the survey shall be returned to the court of the county; and if the court, upon examination thereof, find

it to be correctly made, in conformity with this section, it shall order the same to be recorded.

§ 15. When also an entire tract of land is so sold, and not redeemed within the said two years, the purchaser, his heirs or assigns, at his or their expense, shall have a report made by the surveyor of the county to the court thereof, specifying the metes and bounds of the land sold and the names of the owners of the adjoining tracts, and giving such further description of the land sold as will identify the same; and the county court, unless it see some objection to such report, shall order the same to be recorded. 1845-6, p. 14, ch. 6, § 6.

§ 16. After the expiration of the said two years, the purchaser of any real estate so sold and not redeemed, shall obtain from the clerk or deputy clerk of the court of the county or corporation, (whose officer may have sold such real estate,) a deed conveying the same, in which shall be set forth all the circumstances appearing in the clerk's office in relation to the sale. Moreover, if the sale be of part of a tract of land, the deed shall refer particularly to the plat and certificate of survey returned, according to the fourteenth section and the order of the court thereupon, and if the sale be of an entire tract of land, it shall refer to the report made according to the fifteenth section, and the order thereupon. If the sale be of a town lot, or of an undivided interest in such lot, and a report be made by a surveyor describing the same, and such report be ordered by the court to be recorded, the deed shall refer to the said report. But when, in the case of a sale of a town lot or of an undivided interest in such lot, there is no such report, the clerk shall nevertheless execute a deed therefor to the purchaser, if he desire the same. For every deed executed under this section, the clerk shall be entitled to one dollar, which the purchaser shall pay him on the delivery of the deed. 1831-2, p. 63, § 13; p. 65, § 20. 1839-40, p. 22, ch. 7, § 2. 1840-41, p. 30, ch. 3, § 1.

§ 17. Where the clerk is himself the purchaser, the deed for the land purchased by him, shall be executed by the presiding justice of the court. 1845-6, p. 14, § 4.

§ 18. Where the purchaser has assigned the benefit of his purchase, the deed may, with his assent, evidenced by his joining therein, or by a writing annexed thereto, be executed to his assignee.

§ 19. If the clerk or presiding justice refuse to execute any deed as aforesaid, the court to which the clerk or justice belongs, may direct the execution, if it deem the same proper.

§ 20. If the purchaser shall have died, his heirs or assigns, may move the court of the county or corporation, (whose officer made the sale,) to order the clerk or presiding justice to execute a deed to such heirs or assigns. 1836-7, p. 9, ch. 7. 1840-41, p. 30, ch. 3, § 1. 1841-2, p. 14, ch. 13, § 4.

§ 21. If no such deed or order of court be made under this chapter, within one year after the expiration of the said two years, the former owner, his heirs or assigns, may, after such year and before such deed or order is made, redeem the land,

by paying such amount, with such additional taxes and such interest, as is mentioned in the twelfth section, together with the costs of the survey or report, (and interest thereon,) if any shall have been made.

1821-2, p. 64, § 20;
p. 65, § 22.

§ 22. When the purchaser of any real estate so sold, his heirs or assigns, shall have obtained a deed therefor, according to the six preceding sections, and within six months from the date of such deed, shall have caused the same to be recorded in the court of the county or corporation in which such real estate shall lie, such estate shall stand vested in the grantee in such deed as it was vested in the party assessed with the taxes, (on account whereof the sale was made,) at the commencement of the year for which the said taxes were assessed, notwithstanding any irregularity in the proceedings under which the said grantee claims title, unless such irregularity appear on the face of the proceedings. And if it be alleged that the taxes, for the non-payment of which the sale was made, were not in arrear, the party making such allegation must establish the truth thereof, by proving that the taxes were paid.

Saving as to persons under disability.

Id. p. 65, § 23

§ 23. Any infant, married woman, insane person, or person imprisoned, whose real estate may have been so sold, may redeem the same by paying to the purchaser, his heirs or assigns, within two years after the removal of the disability, the amount for which the same was so sold, with the necessary charges incurred by the purchaser, his heirs or assigns, in obtaining the title under the sale, and such additional taxes on the estate as may have been paid by the purchaser, his heirs or assigns, and interest on the said items, at the rate of ten per centum per annum, from the times the same may have been paid. Upon such payment, within two years after the removal of such disability, the purchaser, his heirs or assigns shall, at the cost of the original owner, his heirs or assigns, convey to him or them, by deed with special warranty, the real estate so sold.

Land purchased by commonwealth for taxes.

Id. p. 63, § 14, p.
64, § 18.

§ 24. When any real estate is offered for sale as aforesaid, by the sheriff or collector, and no person present bids the amount to be satisfied from the sale thereof, the sheriff or collector shall purchase the same on behalf of the commonwealth for the taxes thereon, and the interest on the same, and its proportion of the expense of advertising. A list of the real estate so purchased by the commonwealth shall be made out by the sheriff or collector. After it shall have been verified by him on oath, the court of his county or corporation shall direct its clerk to make out a copy thereof, and

deliver it to the commissioner of the revenue, and shall cause the original list to be certified to the first auditor. Such copy and list the clerk shall deliver and certify accordingly. The list for the auditor he shall place in a sealed enclosure, directed to that officer, and deliver to the said sheriff or collector. Upon receiving the said list, the auditor shall credit the sheriff or collector with the amount for which the said real estate may have been so purchased, but not with any commission thereon.

§ 25. The first auditor shall cause all the lists received in his office, under the preceding section, to be recorded in a well bound book; and all the real estate mentioned in such lists, shall, without any deed for the purpose, stand vested in the commonwealth. 1831-2, p. 63, § 14, p. 64, § 18.

§ 26. The previous owner of any real estate so purchased for the commonwealth, his heirs or assigns, or any person having a right to charge such real estate for a debt, may, until a further sale thereof, as hereinafter mentioned, redeem the same by obtaining from the first auditor such certificate, and paying such fee therefor as is mentioned in the first section, and by paying into the treasury the amount for which such real estate was so purchased, with such additional sums as would have accrued for taxes thereon, if the same had not been purchased for the commonwealth, and interest at the rate of ten per centum per annum, on the former amount, from the date of the purchase, and on the additional sums, from the fifteenth of December, in the year in which the same would have so accrued. When real estate so purchased is so redeemed, the first auditor shall certify the fact to the proper commissioner of the revenue. Id. p. 66, § 25, 26. 1840-41, p. 28, § 98.

§ 27. In the month of April, May or June, of the year eighteen hundred and fifty, and in one of those months every five years afterwards, the first auditor shall cause to be delivered to the sheriff or collector of the taxes for each county or corporation, a list of the real estate therein, so purchased for the commonwealth, at sales for taxes, and remaining unredeemed, with the statement of the amount which it would have been necessary to pay into the treasury on each parcel to effect a redemption thereof, according to the preceding section. And proceedings shall thereupon be had according to the third and other sections, *mutatis mutandis*.

§ 28. When any court shall order a copy of any list of real estate sold under this chapter, to be certified to the first auditor, according to the eleventh section, the clerk of such court shall transmit the same to the auditor within sixty days after the date of such order. If he fail so to do, he shall forfeit one hundred dollars.

§ 29. The real estate embraced in the lists which the first auditor shall cause to be delivered to any sheriff or collector, shall be deemed to have been sold, and the proceeds thereof shall be deemed at least equal to the sums to be satisfied there-

from, unless a list of such thereof as may be purchased for the commonwealth, be received by the auditor according to the twenty-fourth section, and then the proceeds shall only be deemed so much less as the credit on such list shall amount to.

1831-2, p. 64, § 18.
1840-41, p. 28,
§ 99.

§ 30. The proceeds of real estate sold by any sheriff or collector, under this chapter, shall be paid into the treasury within six months after such sheriff or collector shall receive a list thereof from the auditor, save only that a sheriff or collector, the court-house of whose county or corporation is more than one hundred and fifty miles from the seat of government, shall be allowed an additional day for every thirty miles of such excess.

Id.

§ 31. Every sheriff or collector shall be allowed a commission of five per centum on the said sales, (other than to the commonwealth,) and if he shall punctually pay into the treasury within the time prescribed by the preceding section, the amount with which he is chargeable on account of such sales, he shall be allowed an additional commission of two and an half per centum on the same.

Id.
Vide post, ch. 42.

§ 32. In case of a failure so to pay, proceedings shall be had according to the forty-second chapter.

CHAPTER XXXVIII.

OF TAXES ON LICENSES.*

SEC.		SEC.	
1.	By whom the taxes are collected to and the licenses issued.	29.	Of licenses to dentists.
3.		30.	Of licenses to hawkers and pedlars.
4.		31.	
9.	Of licenses on houses of entertainment.	32.	Of licenses to owners of stallions and jackasses.
10.		33.	Licenses for shows, exhibitions and performances.
20.	Of licenses to merchants.	34.	
21.		35.	For what time tax is paid and license granted; and what licenses are transferrable.
22.	Of licenses to auctioneers.	36.	
23.		37.	Commissioner's fees.
24.	Of licenses to venders of medicines.	38.	List of licenses returned by commissioner to auditor.
25.	Of licenses to agents of insurance companies.	39.	
26.	Of licenses to brokers.	40.	Effect of list, and penalty for not returning it.
27.	Of licenses to venders of lottery tickets.	41.	
28.		42.	Sheriff's commissions.
		43.	
		44.	

By whom taxes collected, and licenses issued.

1839-40, p. 6, 7, § 6.

§ 1. The tax on every license issued under this chapter shall, unless otherwise provided, be paid to the officer (of the

* The acts in 2 R. C. p. 41, ch. 185, and p. 46, ch. 186, and the acts amendatory thereof, appear to have been examined at the time of passing the act of 1839-40, p. 5, ch. 2, amending and reducing into one act the several acts concerning the taxes on licenses.

county or corporation wherein the license is issued,) who at the time of payment may be authorized to collect the taxes assessed for that year, (in such county or corporation,) under the thirty-fifth chapter. Ante, p. 178, ch. 35.

§ 2. Every commissioner of the revenue shall ascertain all the persons in his district who ought to obtain such licenses, and deliver to every such person a certificate of the license to be obtained, and the amount of tax to be paid by him. Such certificate shall be produced to the officer to whom the tax is to be paid, and his receipt therefor (written on the certificate) shall, except when a license is desired to keep an ordinary, house of entertainment, or bowling saloon or alley, be produced to the commissioner giving such certificate, who, on receiving from such person a fee of fifty cents, shall grant to him a license, stating what amount of tax is paid by him, and to whom, what privilege he may exercise for such tax, and for what time. 1842-3, p. 14, § 6. 1847-8, p. 9, ch. 4, § 1.

§ 3. Where a commissioner of the revenue desires to obtain a license, which, in the case of another person applying therefor, would be granted by himself, the tax may be paid without such certificate; but the receipt for the tax shall be produced to, and the license shall be granted by, the court of the county or corporation. 1839-40, p. 12, § 25.

For what licenses issue.

§ 4. No person shall, without license, keep either an ordinary, house of private entertainment, or bowling saloon or alley.

§ 5. If such ordinary or house be actually rented or leased, its yearly value shall be determined by the rent agreed to be paid by the tenant; and the commissioner may require the proprietor or tenant to declare on oath what is the amount of such rent. If either of them refuse to state the same when so required, he shall forfeit three hundred dollars. 1839-40, p. 13, 14, § 30, 31. 1840-41, p. 8, § 12.

§ 6. If the premises are in the occupation of the proprietor himself, the commissioner, after making a comparison of the same (where that is in his power) with other like premises actually rented, shall estimate the yearly value to the best of his judgment. In doing this, he shall take into his consideration, not only the house itself, but all the outhouses, gardens, stables, lots, baths, pools and watering-places appurtenant thereto, with all other things that impart value to the same, excluding furniture and the contiguous farm or farm houses. 1839-40, p. 14, § 31. 1840-41, p. 8, § 13. 1845-6, p. 4, § 3.

§ 7. If the person desiring such license be dissatisfied with the valuation of the commissioner, he may appeal to the court of the county or corporation, whose judgment shall be final. 1839-40, p. 14, § 31.

§ 8. The receipt for the tax on such license as is mentioned in the fourth section shall be produced to the court to which application is made for the license, before such application is considered. If the court reject the application, the tax shall be refunded to the person who paid it. Id. p. 9, § 15; p. 13, § 30.

1839-40, p. 9,
§ 17.

§ 9. Any person who shall in any way keep an ordinary, without obtaining a license to do so, shall pay a fine of not less than thirty, nor more than one hundred dollars; and any person who shall keep a house of private entertainment without license, shall pay a fine not exceeding fifty dollars.

1839-40, p. 5, ch.
2, § 1, 2.
1845-6, p. 5, § 3.
1847-8, p. 7, ch. 1,
§ 3.

§ 10. No person shall, without obtaining a license as a merchant, sell at any store or place within this state, any goods, wares, merchandize or other articles, except such as may have been manufactured by the seller in this state, or provisions or agricultural commodities, the growth or production of this state, or some of the *United States*, and except also in the following cases: A person may repair watches or other things, and thereby vend such materials as are used by him in the operation. A planter or farmer may sell to his neighbors any of the following articles, to wit: salt, iron, steel, tea, sugar, coffee, molasses, spices, gypsum, powder, lead or cotton yarn, when such articles are purchased as a return load, or part of a return load for his produce or other property taken to market. A colporteur appointed by any association may sell and distribute religious books. And the officers or trustees of any seminary of learning may sell text books to the students of such seminary. Any person who shall violate this section, shall pay a fine of not less than twenty nor more than two hundred dollars.

1839-40, p. 5, § 1;
p. 6, 7, § 6, 7.

§ 11. Any person desirous of obtaining a license as a merchant, shall pay a tax for each store or place at which he may desire to sell.

1845-6, p. 5, § 3.

§ 12. A merchant or mercantile firm commencing business, shall pay for the first year a specific tax, and if the license under which business is commenced be for part of a year, shall pay for the succeeding year a specific tax. No change in the name of a firm, or the taking a new partner, or the withdrawal of one or more of the firm, shall be considered as commencing business; but if any one or more of the parties remain in the firm, the business shall be regarded as continuing.

1842-3, p. 11, ch.
3, § 1.
1839-40, p. 7, § 9;
1847-8, p. 9, ch. 4,
§ 1.

§ 13. After the business has been carried on under a license for a year, if the said business be continued, the tax for the succeeding year shall be in proportion to the merchant's sales for the preceding year of such goods, wares, merchandize or articles, as by the tenth section a person is prohibited from selling without license, of which sales, the merchant shall render a statement on oath to the commissioner, who, upon the said statement and such other information as he can obtain, shall fix the annual sales of the merchant at such amount as he may deem proper. But the merchant may appeal to the court of the county or corporation, and in such case, the amount of the annual sales shall be fixed by the court.

1831-2, p. 24, ch.
24, § 1.
1839-40, p. 6, § 3,
4, 5.
1842-3, p. 14,
ch. 6.

§ 14. If the merchant shall desire his license to include permission to sell by retail, wine, ardent spirits, or a mixture thereof, he shall pay the additional tax prescribed for this privilege, and obtain from the court of the county or corpora-

tion in which his store or place of sale is situated, a certificate that he is a person of good character, and that the court sees no objection to such permission being granted.

§ 15. Such certificate shall be produced, with the receipt^{1839-40, p. 6, ch. 2, § 6.} for the tax, to the commissioner who shall grant to the merchant such license as he may be entitled to. The license shall in addition to what is prescribed by the second section, state the fact of such certificate, and the situation of the store or place of sale. If the person applying for such license asks that it shall be to him as a commission merchant, the commissioner shall so express on its face.

§ 16. When a person who has obtained a license, or paid a^{Id. § 7.} tax for a license to sell at one store or place, removes to another store or place, and wishes his license altered accordingly, the court of the county or corporation may authorize the commissioner to make such alteration.

§ 17. No such license shall authorize any person to sell^{1845-6, p. 5, § 3.} any goods, wares, merchandize or other articles on board of any vessel within the tidewaters of this state. If such sale be made, the offender shall forfeit thirty dollars.

§ 18. If any person shall, without paying such tax and obtaining such certificate as is prescribed by the fourteenth<sup>1839-40, p. 6, § 3.
1841-2, p. 6, ch. 2.
1842-3, p. 14, ch. 6.</sup> section, sell by retail, wine, ardent spirits, or a mixture thereof, he shall forfeit thirty dollars. And if any person sell by retail, wine, ardent spirits, or a mixture thereof, to be drank in or at the store, or other place of sale, he shall, unless he be licensed to keep an ordinary at such store or place, forfeit thirty dollars.

§ 19. Upon the motion of any inhabitant of the county or corporation, after ten days' notice to any merchant who has obtained such certificate, the court which granted it, if it see cause to do so, may revoke the same. And if, after such revocation, such merchant shall sell by retail, wine, ardent spirits, or any mixture thereof, he shall, for every such offence, forfeit fifty dollars.^{1831-2, p. 24, ch. 24, § 1.}

§ 20. The two preceding sections shall not be construed to^{1839-40, p. 6, § 4.} prohibit any person from selling by retail liquors actually made from the produce of his estate, or distilled by him or those in his employment, when such liquors are not drank in or at the place of sale.

§ 21. No person shall, without being licensed as an auctioneer for any corporation having a population of more than<sup>Id. p. 7, § 10; p. 8, § 11.
1841-2, p. 6, ch. 3, § 2.</sup> two thousand inhabitants, sell therein, or within one mile thereof, at auction, any real estate, goods, wares, merchandize or other articles, except in the following cases, to wit: the estate of a decedent may be sold by his representative according to law, or the provisions of the will; property conveyed by deed of trust, or decreed or ordered to be sold by a court, may be sold according to the deed, decree or order; any person may sell agricultural products; and an

officer may sell property distrained by him, or taken by him under execution or other legal process.

1840-41, p. 7, ch. 3, § 2.

§ 22. Any person violating the preceding section shall pay a fine of not less than thirty, nor more than one thousand dollars.

1842-3, p. 11, 12, ch. 3, § 2, 3.
1845-6, p. 5, § 3.

§ 23. The rules prescribed by the twelfth and thirteenth sections shall apply to an auctioneer in like manner as to a merchant, except that an auctioneer may have a license to sell real estate only on paying a specific tax, though his business be continued.

1843-4, p. 11, ch. 4, § 1, 2.

§ 24. No person shall, in any county or corporation of this state, sell or barter any patent, specific or quack medicine, without first obtaining a license to sell or barter the same in such county or corporation. Any person violating this section, shall pay a fine of not less than ten, nor more than fifty dollars.

1845-6, p. 6, § 3.

§ 25. No agent or sub-agent of any insurance company or office, incorporated or authorized by another state, shall establish or keep any office, or transact the business of his agency within this state without a license. Any person violating this section, shall pay a fine of not less than forty, nor more than one hundred dollars.

1839-40, p. 8, § 10.
1841-2, p. 7, ch. 3, § 3.

§ 26. No person shall, without obtaining a license as a broker, buy, exchange or sell on commission, or for any profit or reward, or as a part of his regular employment or business, certificates of debt of any state, or of the *United States*, or stock of any state, or in any bank or incorporated company, or the notes of any bank, or any gold or silver coin, or any bill of exchange, draft or note. Any person violating this section shall forfeit six hundred dollars.

1839-40, p. 8, § 10, 12.

§ 27. No person shall, without obtaining a license as a vender of lottery tickets for a particular county or corporation, sell therein any foreign lottery ticket, or any ticket in a lottery authorized by the laws of this state, or a share of any such ticket, or any policy, guarantee or assurance of the prize, or part of the prize to be drawn by any such ticket. Any person violating this section shall forfeit two thousand dollars.

Id. § 11.

§ 28. No such license shall be deemed to authorize any person to sell in any incorporated city or town, any lottery ticket, or do any of the things mentioned in the preceding section contrary to the ordinances of such corporation.

1842-3, p. 10, § 13.

§ 29. Any person not a resident of this state who shall, without being licensed as a dentist in a particular county or corporation, practise therein the art of dentistry, shall forfeit thirty dollars.

1839-40, p. 10, 11, § 20.
1845-6, p. 6, § 3.
1817-8, p. 9, ch. 1, § 9.

§ 30. No person shall, without a license, act as a hawker or pedlar in selling or trading in goods, wares, merchandize or other articles, except cotton yarns, and except articles manufactured by the seller in this state, or provisions or agricultural commodities grown or produced in the *United States*. The license shall be a personal privilege. No other person

shall act under it either as partner of, or agent for, the person to whom it issued. Any person who shall violate this section in any respect, shall pay a fine of not less than twenty, nor more than one hundred dollars.

§ 31. Such license shall not extend beyond the county or corporation in which it is issued, except where it is issued, in one of the counties bordering on the *Ohio* river, to a person as hawker or pedlar in other articles than clocks, in which case the license shall authorize him to deal in such articles in any other county bordering on the said river. 1839-40, p. 12, § 24. 1845-6, p. 5, § 3.

§ 32. Any person who, without a license, shall permit any stallion or jackass, belonging to him or under his control, to cover mares for compensation, shall forfeit fifty dollars. But the person obtaining such license, may let the horse or ass to mares in any part of the state, during the season for which the license has been obtained. 1840-41, p. 21, § 70.

§ 33. There shall be a tax per week on theatrical performances in a public theatre; a tax per year on the sale of refreshments in a public theatre during such performances; a tax per year on the proprietor or occupier of any public room fitted for public exhibitions, who permits the same to be used for such purposes; a tax on any public show, exhibition or performance elsewhere, for every twenty-four hours, or for each time of performance; and a tax per year on a billiard table or bowling saloon or alley kept by any person for the accommodation of others. And any person who shall do or permit any of these things, without paying the tax and obtaining a license, shall pay a fine of not less than ten, nor more than one hundred dollars, and be liable also for the tax. In such case the tax shall be recoverable forthwith. 1839-40, p. 12, § 23, 24. 1845-6, p. 6, § 3. 1846-7, p. 8, 9, ch. 2, § 1, 2; p. 9, ch. 2, § 4, and ch. 3.

§ 34. The preceding section shall not be construed as requiring a tax to be paid by any mechanic or artist, for exhibiting any work or production of his own art or invention; or by any lecturer on a literary or scientific subject; or for a musical concert. And no license shall be deemed to authorize any show, exhibition or performance in a city or town, contrary to the ordinances of the corporation, or to authorize any negro to take part in such show, exhibition or performance. Id.

For what time license granted; what licenses not transferrable.

§ 35. All licenses granted to keepers of ordinaries, keepers of houses of private entertainment, merchants, auctioneers and agents of insurance companies, shall expire at the succeeding May term of the court of the county or corporation wherein they may have been granted. If not granted during May term, the tax to be paid upon every such license shall bear such proportion to the whole annual tax as the space of time between the granting of the same and the next May term, bears to a whole year. The license granted to the 1839-40, p. 13, § 26. 1845-6, p. 5, § 3.

owners of stallions and jackasses may begin at any time of the year, but shall expire on the first day of January next ensuing; not less shall be received at any time than one year's tax. A person obtaining any of the licenses mentioned in this section may transfer the unexpired term thereof, by the leave of the court of the county or corporation.

1839-40, p. 13,
§ 26.
1845-6, p. 5, § 3.

§ 36. All licenses granted to venders of patent, specific or quack medicines, brokers, venders of lottery tickets, dentists, and hawkers or pedlars, and keepers of billiard tables or bowling saloons or alleys, shall expire at the end of one year from the day of granting the license. No such license shall be for a shorter period. Nor shall there be any abatement or apportionment of the tax if the privilege granted be exercised for a shorter time. Neither shall the unexpired term of any such license be in any manner transferred from the person to whom it was granted to any other person.

Commissioners' fees; list of licenses to be returned.

1839-40, p. 13,
§ 28, 29.
1847-8, p. 9, ch. 4.

§ 37. For every certificate delivered by a commissioner, to a person desiring to obtain a license from a court, the commissioner shall be entitled (if such license be granted,) to a fee of fifty cents, which shall be paid to him out of the treasury on the warrant of the first auditor.

1839-40, p. 16,
§ 38.
1842-3, p. 13, ch.
5, § 1.

§ 38. Every commissioner of the revenue shall return to the first auditor, a list of all licenses granted under the provisions of this chapter, that is to say, a list of such as are granted on or after the first day of September and before the first day of June following, shall be returned on or before the tenth day of the said month of June, and a list of such as are granted on or after the first day of June, and before the first day of September following, shall be returned during the said month of September. Such lists shall specify the date of each license, for what purpose it was granted, the name of the person to whom granted, the amount of tax, and to whom paid.

1839-40, p. 16,
§ 39.
1842-3, p. 13, ch.
5, § 2.

§ 39. Before making out any such list, the commissioner shall go to the clerk's office and examine therein the orders of court granting licenses to keepers of ordinaries and houses of private entertainment and keepers of bowling saloons and alleys, and the receipts for the taxes on such licenses, which shall remain filed in the clerk's office.

1839-40, p. 16,
§ 40.
1842-3, p. 13, ch.
5, § 3.

§ 40. If any commissioner fail to return any such list at the time and in the manner before directed, without a reasonable excuse therefor, no warrant shall be issued by the first auditor in his favor until the list is returned. And he shall moreover forfeit one hundred dollars.

1842-3, p. 13, 14,
ch. 5, § 3, 6.

§ 41. Any such list signed by the commissioner, wherein shall be stated the amount of tax paid for any license, and to whom paid, shall, in any motion or proceeding against any delinquent sheriff or collector, be legal evidence to charge him therewith.

Sheriff's commissions.

§ 42. Every sheriff or person receiving taxes on licenses ^{1839-40, p. 17, § 42.} under this chapter, shall be allowed a commission of five per ^{1842-3, p. 14, § 5.} centum for their collection and punctual payment into the treasury, upon the first five thousand dollars, and two and a half per centum upon any excess over that sum.

§ 43. Every sheriff or collector shall account for and pay ^{1839-40, p. 17, § 41.} into the treasury, the taxes received on licenses at the follow- ^{1842-3, p. 14, § 4.} ing times: The taxes received on or after the first day of September, and before the first day of June following, shall be accounted for and paid on or before the twentieth day of the said month of June; and the taxes received on or after the first day of September following, shall be accounted for and paid at the same time that other taxes collected by such sheriff or collector are required by law to be accounted for and paid.

§ 44. If the taxes required to be paid on or before the ^{1839-40, p. 17, § 42.} twentieth day of June, be not then paid, judgment may be ^{1842-3, p. 14, § 7.} rendered at the next term of the general court on account thereof, against the sheriff or collector and his sureties, or any of them, without previous notice. Or proceedings may be ^{Post. ch. 42.} had according to the forty-second chapter.

CHAPTER XXXIX.

OF TAXES ON DIVIDENDS; CERTAIN ESTATES OF DECEDENTS;
PROCESS IN SUITS; OFFICIAL SEALS; AND DEEDS, WILLS
AND ADMINISTRATIONS.

SEC.		SEC.	
1	} On dividends declared by banks or to } incorporated companies.	16.	} On deeds, wills and administrations.
5.		18.	
6		19	} How collecting officers account to } and pay.
to }	} On certain estates of decedents.	23.	
12.			
13.	} On process and seals.		
10			
15.			

On dividends declared by banks or incorporated companies.

§ 1. There shall be a tax on each dividend of profits, ^{1842-3, p. 8, § 2, 3;} declared by any bank or other joint stock company incorpo- ^{p. 10, § 11.} rated by this state, except on so much thereof as is on stock ^{1845-6, p. 7, § 5.} *bona fide* held by persons residing out of this state, or by corporations not within the same, and except also that when the dividend is declared by a coal mining company, there shall be deducted from the dividend tax, such tax as may be

paid on the assessed value of the company's coal lands for the time for which the dividend is declared. The president and directors of such bank or company shall cause the tax to be retained from the dividend on which it is payable.

1842-3, p. 8, § 3,
11.

§ 2. Within one month after such dividend is declared, the cashier of such bank, or the officer or agent of such company having custody of the funds thereof, shall certify on oath to the first auditor the amount of such dividend, and the amount of the tax payable on account thereof. If he fail so to do, he shall pay a fine of not less than one hundred, nor more than one thousand dollars.

Id. § 2, 3, 11.

§ 3. Within two months after such dividend is declared, the bank or company shall pay the amount of the tax thereon into the treasury, or, if the first auditor so direct, to the sheriff or other collector of the taxes assessed in the county or corporation in which such dividend is declared. If it fail so to do, it shall be liable not only for the amount of the said tax, but also for ten per centum damages thereon, to be recovered by action or motion.

Id. § 3, 11.

§ 4. If within the year preceding the first day of February, any such bank or company shall not have declared a dividend, the cashier or other officer or agent having custody of the funds thereof, shall certify on oath the fact that none has been so declared, and deliver such certificate to the first auditor before the first day of April following. If he fail so to do, he shall forfeit one hundred dollars.

Id. § 5, 12.

§ 5. The five preceding sections shall not be construed to extend to the *Richmond* fire association, nor to any company whose profits are exempt by its charter from public tax.

On certain estates of decedents.

1843-4, p. 9, ch. 3,
§ 1.

§ 6. Where any estate within this commonwealth of any decedent shall pass under his will, or the laws regulating descents and distributions to any other person, or for any other use, than to or for the use of the father, mother, husband, wife, brother, sister or lineal descendant of such decedent, the estate so passing, if of greater value than two hundred and fifty dollars, shall be subject to a tax of a certain per cent.

Id.

§ 7. The personal representative of such decedent shall pay the whole of such tax, except on real estate, to sell which, or to receive the rents and profits of which, he is not authorized by the will; and the sureties in his official bond shall be bound for the payment thereof.

Id.

§ 8. Such payment shall be made to the sheriff or other collector of the taxes assessed in the county or corporation in which certificate was granted such personal representative, for obtaining probat of the will or letters of administration.

Id.

§ 9. The per cent. shall be governed by the law in force at the time of the decedent's death. It shall be on every hundred dollars in value of the estate subject to such tax, which

the personal representative may have to pay or deliver, and in proportion for a smaller sum. Where he has personal property to deliver in kind, and the same has been appraised, the value shall be ascertained from such appraisement.

§ 10. Such personal representative may, if necessary, sell ^{1843-4, p. 9, ch. 3, § 1.} so much of the property subject to such tax as will enable him to pay the same.

§ 11. The sheriff or collector shall apply for such tax, and ^{Id.} when it is paid, give therefor duplicate receipts, one of which shall be lodged with the clerk of the court in which certificate may have been granted for obtaining probat of the will or letters of administration. The clerk shall record such receipt in the book wherein he records appraisements and accounts of sales of decedents' estates; and he shall forthwith transmit a copy thereof to the first auditor. The other receipt shall be delivered to the commissioner of the revenue for the county or corporation, who, on such delivery, shall make a copy thereof, at the foot of which he shall sign an acknowledgment that it is a copy of a receipt which has been delivered to him, stating the date of the delivery. Such copy shall be delivered to the personal representative, who shall pay therefor to the commissioner, a fee of fifty cents. Every clerk or commissioner to whom any such receipt is delivered, shall forthwith transmit a copy thereof to the first auditor. Every personal representative or officer failing in any respect to comply with this section shall forfeit one hundred dollars.

§ 12. Any personal representative failing to pay such tax, ^{Id.} before the estate on which it is chargeable is paid or delivered over, (whether he be applied to for the tax or not,) shall be liable to damages thereon at the rate of ten per centum per annum, from the time such estate is paid or delivered over until the tax is paid; which damages may be recovered with the tax, on motion against him in the said court in the name of the commonwealth. Such estate shall be deemed paid or delivered at the end of a year from the decedent's death, unless and except so far as it may appear that the legatee or distributee has neither received such estate, nor is entitled then to demand it.

On process, seals, deeds, wills and administrations.

§ 13. There shall be a tax paid when a suit is commenced ^{1839-40, p. 17, § 44.} in a county or corporation court; when an original suit or an appeal, writ of error, or supersedeas, is commenced in a circuit court; when an appeal, writ of error or, supersedeas, is commenced in the court of appeals; and when the seal of a court, or of a notary public, or the seal of the state, is annexed to any paper, except in the cases hereinafter provided for.

§ 14. The said taxes on process and seals of courts, shall ^{Id.} be paid to the clerks of the courts respectively, from which said process is issued, or whose seal is used. The tax on the

seal of a notary, shall be paid to said notary, and that on the seal of the state to the secretary of the commonwealth.

2 R. C. p. 148, § 15. No tax shall be charged when a seal is annexed to
ch. 187. any paper or document, to be used in obtaining the benefit of
1826-7, p. 19, ch. 21. a pension, revolutionary claim, money due on account of mili-
1832-3, p. 44, ch. 72. tary services or land bounty, under any act of congress, or un-
1834-5, p. 37, ch. 55. der a law of this or any other state, or when a seal is annexed
1847-8, p. 9, ch. 3. by a notary public to an affidavit or deposition.

1843-4, p. 8, ch. 2, § 1. § 16. No deed shall be admitted to record until the tax thereon is paid to the clerk; except a deed conveying land as a site for a school house or church.

Id. § 2. § 17. No will shall be admitted to probat, until the tax on such probat is paid to the clerk.

Id. § 7. § 18. There shall be no grant of administration on the estate of any decedent, until the tax on such grant is paid to the clerk; except where an estate is committed to a sheriff or other officer.

How collecting officers account and pay.

1839-40, p. 17, § 43, 45. § 19. The clerk of each court, every notary public. and the
1843-4, p. 8, ch. 2, § 4. secretary of the commonwealth, shall make out an account of all taxes received by him on or after the first day of September in one year, and before the first day of September in the next year.

1839-40, p. 18, § 45, 46. § 20. Each of the said officers shall swear to the correctness of the account; which shall be rendered to the first auditor, and the amount appearing due thereby paid into the treasury, on or before the fifteenth day of December following, deducting thereout a commission of five per centum for receiving and paying the same.

Id. § 21. If any of the said officers fail to render such account on or before the said fifteenth day of December, there shall be a forfeiture therefor as follows: a clerk so failing shall forfeit six hundred dollars, a notary public three hundred dollars, and the secretary of the commonwealth one hundred and fifty dollars; and for every month that such failure may continue after the said fifteenth day of December, there shall be an addition to such forfeiture of one twelfth of the amount thereof. For any such failure motions may be repeated from time to time, so long as it continues.

Id. § 46. § 22. None of the said officers shall receive any money from the treasury, until he shall have rendered such account and made such payment as is above required.

Post. ch. 42. § 23. All sums received by any sheriff or collector under this chapter, after deducting a commission of five per centum thereon, shall be paid into the treasury on or before the fifteenth day of December, next after the receipt thereof. In case of failure so to pay, proceedings may be had according to the forty-second chapter.

CHAPTER XL.

PRESCRIBING WHAT IS TO BE COLLECTED ON EACH SUBJECT OF TAXATION.

SEC.

1. On property.
2. On licenses.

SEC.

3. On dividends, estates of decedents, process, seals, deeds, wills and administrations.
4. On salaries.

On property.

§ 1. The taxes on the persons and subjects mentioned in the thirty-fifth chapter, shall be yearly as follows: Ante, p. 177, ch. 35.

On tracts of land, ten cents for every hundred dollars value thereof.

On improved lots in any city or town, occupied by the proprietor, or rented or leased out, two dollars and forty cents for every hundred dollars of the yearly rent or value thereof.

On lots in any city or town, which are unimproved, or which though improved, are neither occupied by the proprietor, nor rented or leased out, ten cents for every hundred dollars value thereof.

On every slave above the age of twelve years, except such as may be exempted by a county or corporation court, thirty-two cents.

On every horse, mare, mule, ass or colt, (other than a stallion or jackass let to mares,) ten cents.

On every gold watch, one dollar.

On every patent lever or lepine silver watch, fifty cents.

On every silver or metallic watch, (other than gold or patent lever or lepine aforesaid,) twenty-five cents.

On a brass or other metallic clock, whether wholly of metal, or only in part, twenty-five cents.

On every other clock, twelve and a half cents.

On gold or silver plate, whether in use or not, (other than plate kept in a shop or manufactory for sale,) one and one half per centum on so much of the value thereof as is over fifty dollars.

On every riding or pleasure carriage, whether four-wheeled or two-wheeled, and whether a stage coach, jersey wagon, carryall, gig or buggy, or called by any other name, with the harness belonging thereto, and on every piano forte, harp, and every unlicensed billiard table, one and a half per centum on the value thereof.

On so much of the interest or profit mentioned in the fifty-second section of the said chapter as may exceed six dollars during the year, one and a half per centum. Ante, ch. 35, § 52.

On the yearly income mentioned in the fifty-third section Id. § 53.

of the said chapter, one per centum on so much as is over four hundred dollars.

Ante, ch. 35, § 54.

On the fees mentioned in the fifty-fourth section of the said chapter, one per centum on all over four hundred dollars; and on every attorney, physician, surgeon and resident dentist mentioned therein, five dollars; and if any attorney practise in the court of appeals, five dollars more.

Id. § 56.

On every toll bridge or ferry, (other than such as are excepted by the fifty-sixth section of the said chapter,) one and an half per centum on so much of the yearly rent or value thereof as exceeds one hundred dollars.

On licenses.

§ 2. The taxes on the licenses mentioned in the thirty-eighth chapter, shall be as follow:

On a license to keep an ordinary or house of public entertainment, twenty dollars for so much of the yearly value thereof as does not exceed, and seven and an half per centum on so much of the yearly value as does exceed, two hundred dollars.

On a license to keep a house of private entertainment, three dollars for so much of the yearly value thereof as does not exceed, and five per cent. on so much of the yearly value as does exceed, fifty dollars.

On a license to a merchant or mercantile firm when a specific tax is to be paid, twenty dollars; and when the tax is in proportion to the sales, if they are under twenty-five hundred dollars, ten dollars; if twenty-five hundred dollars and under five thousand dollars, fifteen dollars; if five thousand dollars and under ten thousand dollars, twenty-five dollars; if ten thousand dollars and under fifteen thousand dollars, thirty dollars; if fifteen thousand dollars and under twenty thousand dollars, thirty-five dollars; if twenty thousand dollars and under thirty thousand dollars, forty-five dollars; if thirty thousand dollars and under fifty thousand dollars, sixty-five dollars; if fifty thousand dollars and under seventy-five thousand dollars, eighty dollars; and if seventy-five thousand dollars or more, one hundred dollars. And in every case in which the license to a merchant or firm includes permission to sell by retail wine, ardent spirits, or a mixture thereof, an additional tax of fifteen dollars.

On a license to an auctioneer, when a specific tax is to be paid, if the population of the town does not exceed three thousand, twenty dollars; if its population does exceed three thousand, an additional tax of ten dollars for every thousand above that number and at that rate. But the specific tax shall in no case exceed one hundred and fifty dollars; and if the license be to sell real estate only, shall not exceed fifty dollars. And when the tax is in proportion to the sales, if the sales are under ten thousand dollars, twenty dollars; if

ten thousand dollars and under twenty-five thousand dollars, seventy-five dollars; if twenty-five thousand dollars and under fifty thousand dollars, one hundred and twenty-five dollars; if fifty thousand dollars and under seventy-five thousand dollars, one hundred and seventy-five dollars; if seventy-five thousand dollars and under one hundred thousand dollars, two hundred and twenty-five dollars; if one hundred thousand dollars and under one hundred and fifty thousand dollars, three hundred and twenty-five dollars; if one hundred and fifty thousand dollars and under two hundred thousand dollars, four hundred and twenty-five dollars; if two hundred thousand dollars or more, five hundred dollars.

On a license to sell or barter patent, specific and quack medicines, fifteen dollars.

On a license to an agent or sub-agent of an insurance company or office, incorporated or authorized by another state, one hundred dollars, for an office in this state in a town the population whereof exceeds fifteen hundred, unless it be a sub-agency of a life insurance company paying the tax of one hundred dollars, in which case there shall only be paid for such sub-agency twenty dollars, and the same shall be paid for an office in a town the population whereof does not exceed fifteen hundred.

On a license to any one as a broker, three hundred dollars.

On a license to a vender of lottery tickets one thousand dollars.

On a license to a dentist, five dollars.

On a license to a hawker or pedlar to deal in tin and pewter, ten dollars; to deal in clocks, fifty dollars; to deal in goods, wares, merchandize or other articles, except tin, pewter and clocks, sixty dollars; to deal in goods wares, merchandize, or other articles, except clocks, when the license is issued in one of the counties bordering on the *Ohio* river, thirty dollars.

On a license permitting a stallion or jackass to cover mares for compensation, twice the price at which such stallion or jackass covers a mare by the season, and when the price is not to be paid in money, but in other articles of value, then twice the value of such articles, to be ascertained by the commissioner of the revenue; and in case the stallion or jackass does not cover by the season, then twice what the commissioner may adjudge would be a reasonable charge therefor; the tax, however, on any stallion or jackass covering mares for compensation, not to be in any case less than six dollars.

On a license permitting theatrical performances in a public theatre, three dollars for each week of such performances; on a license permitting for a year the sale of refreshments in a theatre, during such performances, twenty dollars; on a license permitting the proprietor or occupier of any public room fitted for public exhibitions, to use the same for such purposes for a year, sixty dollars; on a license permitting any public show,

exhibition or performance elsewhere, for every twenty-four hours, or for each time of performance, ten dollars.

On a license permitting a billiard table to be kept for a year, thirty dollars, if at any mineral spring, and two hundred dollars if elsewhere; and on a license permitting a bowling saloon or alley to be kept for a year, ten dollars, if at any mineral spring, and twenty dollars if elsewhere.

On other subjects.

Ante, p. 213, ch.
39.

§ 3. The taxes prescribed by the first section of the thirty-ninth chapter, shall be one and an half per centum on the dividends; the tax on the estate of a decedent prescribed by the said chapter, shall be two per centum of such estate; and the other taxes prescribed by the said chapter shall be as follows, to wit: when a suit is commenced in a county or corporation court, fifty cents; when an original suit, or an appeal, writ of error or supersedeas, is commenced in the court of appeals, two dollars and fifty cents; when the seal of a court, of a notary public, or the seal of the state is annexed to any paper, (except in the cases provided for by the sixteenth section of the said chapter,) two dollars for the state seal, and one dollar and twenty-five cents for any of the other seals; and upon every deed, will, or grant of administration, on which a tax is to be paid according to the said chapter, fifty cents.

Id. § 16.

1845-6, p. 8, § 8.

§ 4. There shall be a tax on each officer of government receiving a salary out of the treasury, other than the governor or a judge, of one per centum on so much of said salary as is over four hundred dollars, which shall be deducted at the time the salary is audited and paid.

CHAPTER XLI.

OF THE RECEIPTS FOR WASTE LANDS; AND FOR FEES PAID
IN THE LAND OFFICE.

SEC.

1. Receipts for waste lands.
2. Receipts for fees paid in land office.

SEC.

3. How register is to account and pay.

1 R. C. p. 323, ch.
86, § 5.

§ 1. A person desiring to purchase any waste and unappropriated land authorized by law to be sold, shall pay into the treasury two dollars for every hundred acres, and so in proportion for a greater or smaller quantity. The treasurer shall give to the purchaser a receipt for the money paid, specifying the purpose for which the payment is made. The receipt being delivered to the first auditor, he shall give to such person a certificate thereof, stating the quantity of land he is entitled to.

§ 2. There shall be paid to the register of the land office the following sums:

1 R. C. p. 303-4,
p. 468, § 8.
1839-40, p. 17, §
44.
1845-6, p. 4, § 2.

For issuing a warrant of survey and keeping a register thereof, where it does not exceed one hundred acres, - - - - -	\$ 0 75
Where it does, for every fifty acres exceeding that quantity, - - - - -	0 25
For issuing a warrant in exchange for another warrant, or where the lands claimed under a former warrant shall be recovered under a caveat, and keeping a register thereof, - - - - -	1 00
For receiving a plat and certificate, and giving a receipt for the same, - - - - -	0 25
For recording the same, if there be no assignment thereon, and there be not more than ten courses, - - - - -	0 50
For every course above ten, - - - - -	0 03
For every transfer of a surveyor's certificate, - - - - -	1 60
For issuing and recording a grant, if the quantity therein exceed not one hundred acres, - - - - -	1 75
For every fifty acres exceeding that quantity, if there are not more than ten courses, - - - - -	0 10
For every course above ten, - - - - -	0 06
For entering a caveat, or for a copy thereof, - - - - -	0 75
For a search for any thing, and reading the same, if within the time of ten years, (to be mentioned by the applicant,) - - - - -	0 12½
For every ten years more than the first, - - - - -	0 12½
For every title paper recited in any inclusive survey, - - - - -	0 10
For a copy of a grant, where the same does not exceed four hundred words, - - - - -	0 63
For every thirty words thereafter, - - - - -	0 03
For a copy of a plat and certificate of survey, where the same does not exceed ten courses, - - - - -	0 75
And for every course thereafter, - - - - -	0 06
For every copy or certificate, for which there is no specified fee, if the same does not exceed two hundred words, - - - - -	0 25
And for every thirty words thereafter, - - - - -	0 03
For entering in the margin of the record of a grant, the substance of a decree repealing such grant, - - - - -	0 25

§ 3. On receiving each survey into the register's office, the fees that will accrue on the same including the issuing of the grant thereupon, shall be paid.

1 R. C. p. 337, §
67.

§ 4. The register of the land office shall semi-annually, before the fifteenth day of April and fifteenth day of October, render to the first auditor an account of the sums received in the said office. The account shall be to the first day of the month in which it is made out, and shall be of every thing received in the said office, from the day to which the previous account was made up. The register shall swear to the correctness of the account, and the first auditor shall make such

1839-40, p. 19, §
49.

comparison thereof as he can, with the books in the land office.

1839-40, p. 19,
§ 49.

§ 5. If the register fail to render such account according to the preceding section, he shall forfeit two thousand dollars.

§ 6. Within ten days after rendering any such account, the register shall pay into the treasury the balance appearing due thereby. If he fail so to do, proceedings shall be had according to the forty-second chapter.

CHAPTER XLII.

THE MODE OF RECOVERING AND ENFORCING PAYMENT INTO THE TREASURY, OF PUBLIC MONEY COLLECTED, AND DEBTS TO THE COMMONWEALTH GENERALLY, WITH THE MANNER OF SELLING LANDS TAKEN FOR SUCH DEBTS, OR OTHERWISE ACQUIRED BY THE COMMONWEALTH.

SEC.		SEC.	
1	} Proceedings to judgment or decree.	23.	Effect of lapse of time.
to 7.		24.	Auditor's power to adjust old claims.
8		25	} The auditor's agents, his registry
to 10	} Execution and proceedings thereupon.	to	
22.		33.	of lands and sales thereof.

Proceedings to judgment or decree.

2 R. C. p. 2, § 3, 4. § 1. The first auditor shall institute and prosecute all proceedings proper to enforce payment of money to the commonwealth.

1842-3, p. 44, ch. 80. § 2. The proceeding may be in the circuit court of *Henrico*, or if it be at law in the general court. When it is at law, it may be by action or motion.

§ 3. Any such action shall be in the name of the commonwealth of *Virginia*, except where it is on a bond payable to, or a contract made with, the governor or some other person. And then it may be in the name of such governor or other person for the use of the commonwealth, notwithstanding such governor or other person may have died, resigned or been removed from office before the commencement of the action. And there shall be no abatement thereof by reason of the death, resignation or removal from office of any such plaintiff pending the action.

1828-9, p. 9, ch. 5, § 1.
1839-40, p. 17, § 42.
1842-3, p. 14, § 5. § 4. Any such motion may be made against any person indebted or liable to the commonwealth in any way whatever, and against his sureties, and against his and their personal representatives. And it may be made where the debt or liability is created or secured by a bond or other instrument, whether the same be payable to the commonwealth or to any

person acting in a public character on behalf of the commonwealth, or be for the payment of money or the performance of other duties. Every judgment on any such motion shall be in the name of the commonwealth.

§ 5. On any such motion, the judgment shall be for so much principal and interest, as would be recoverable by action. It may be also for fifteen per centum damages in addition thereto, where the proceeding is against a sheriff or other collector, or his sureties, or his or their personal representatives for taxes or other public money which ought to have been paid into the treasury. In such proceeding, the court, in pronouncing judgment, may consider all the circumstances, and give judgment for the damages or not, or for such part of the damages, as it may deem proper.

§ 6. After a debt to the commonwealth shall have been paid, if it appear that an error or mistake has been committed to its prejudice, whether before or after the issuing of execution, a motion may be made on ten days' notice against any person liable for the debt, for the amount of such error or mistake, and judgment may be given therefor, without interest or damages thereupon.

§ 7. Courts wherein cases shall be pending to which the commonwealth is a party, may hear them before other cases, and expedite the proceedings therein by such rules as to them shall seem proper.

Execution and proceedings thereupon.

§ 8. In a writ of *fieri facias* upon a judgment or decree against any person indebted or liable to the commonwealth, or against any surety of his, after the words "*we command you that of the*", the clerk shall insert the words, "*goods, chattels and real estate*," and conform the subsequent part of such writ thereto. And under any writ so issued, real estate may be taken and sold.

§ 9. An execution on behalf of the commonwealth from any court holden in the city of *Richmond* may, if the first auditor see fit, be directed to any sheriff, sergeant, coroner or constable, of any county or corporation, and shall be served by any of the said officers in whose hands the first auditor may cause it to be placed.

§ 10. Every writ of *fieri facias*, issuing according to the eighth section, shall be levied first on the goods and chattels. If in the county or corporation of the officer having such writ, there shall be no goods and chattels liable thereto, or not a sufficiency thereof, then he shall levy it on the real estate.

§ 11. When a levy is so made upon real estate, the officer making it shall post notice thereof, and of the time and place of sale at such public places as may seem to him expedient, and at the door of the courthouse of his county or corporation on a court day. The time of selling the real estate shall

be not less than sixty, nor more than ninety days from the time of posting the notice at the courthouse door. And the sale shall take place at the premises, or at the door of the courthouse, as the officer may deem most advisable.

2 R. C. p. 52,
§ 12.

§12. If the amount of the execution be not sooner paid, the said officer shall proceed, on the day mentioned in the notice, to sell at public auction the interest of the party, against whom the execution issued, in the real estate, or so much thereof as the officer may deem sufficient; and if a part only be sold, it shall be laid off in one parcel in such place and manner as the debtor or his agent may direct, or if he give no direction, as the officer may deem best.

Id. § 12, 13, 14.

§ 13. The sale shall be upon six months' credit; and if the land be not purchased for the commonwealth, the officer shall take bond of the purchaser, with sureties, for the payment of the purchase money to the commonwealth. Every such bond shall mention on what occasion the same was taken, and be returned to the office of the court from which the execution issued, and the clerk shall endorse thereon the date of its return.

Id. § 17.

§ 14. So soon as the purchaser shall pay the purchase money, a deed shall be executed at his costs, reciting the execution, the sale and the price, and conveying the land to him. The grantor in such deed may either be the sheriff or other principal officer himself, or the deputy who acted in making the sale. The deed of either shall pass to the purchaser all the interest which the party, against whom the execution issued, had in the land at the date of the judgment or decree.

Id. p. 53, § 18.

§ 15. Where the officer and his deputy who acted in making the sale, shall both have died, or removed out of the state, before making such deed, the same may be executed by any successor of such officer.

Id. p. 52, § 13.

§ 16. When any bond taken under the thirteenth section shall become payable and be returned to the office of the court from which the execution issued, it shall have the force of a judgment against such of the obligors therein as may be then alive. Execution may be issued thereon against them. And the same shall be proceeded under in like manner as an execution issued on such a judgment or decree as is mentioned in the eighth section, save only that the clerk shall endorse that *no security is to be taken*, and the officer shall govern himself accordingly, and sell for ready money any real estate which he may levy upon under the same.

§ 17. Against the personal representatives of such of the said obligors as may have died, (before the bond has the force of a judgment against the survivors,) judgment may be obtained by action or motion.

2 R. C. p. 54, § 21,
25.
1824-5, p. 8, ch. 6.

§ 18. Where return is made on any execution on behalf of the commonwealth, that goods, chattels, or real estate remain unsold for want of bidders, or to that effect, the clerk of the

court from which such execution issued, shall, when required ^{2 R. C. p. 54, § 21, 25.} by the first auditor, issue a writ of *venditioni exponas*, ^{1824-5, p. 8, ch. 6.} directed to the sheriff of any county, adjacent to that in which the levy was made, that the said auditor may designate, which writ shall recite the execution under which the levy was made, the nature of such levy and the return that the property remains unsold for the want of bidders, and shall command the sheriff of such adjacent county, if the property remaining unsold be goods or chattels, to go into the county in which the levy was made, and receive the same from the officer that made the levy, and whether the property be goods, chattels, or real estate, to sell the same.

§ 19. The officer that made the levy shall deliver the said ^{1a.} goods and chattels to the sheriff to whom such writ of *venditioni exponas* may be directed, upon such sheriff's producing to him the said writ, and executing a receipt for the said goods and chattels. And in case the said officer shall fail to deliver the same, and return be made on such writ to that effect, the court from which it issued, upon motion, may give judgment against the said officer and his sureties for the whole sum that the execution amounted to at the time of such failure, with interest thereupon from that time.

§ 20. The sheriff to whom such writ of *venditioni exponas* ^{1a.} may be directed, shall sell the goods and chattels in the county where received, if the same can be sold therein, and if not, he shall cause the same to be removed to the courthouse of his own county and there sold. The removal shall be at the costs of the party against whom the execution issued, and the sale under the execution shall be to raise the cost of removal, in addition to the amount which it would otherwise have been necessary to raise.

§ 21. Such sheriff shall also sell the real estate levied upon ^{1a.} in the county wherein the levy was made, if it can be done, and if it cannot, he shall make the sale at the courthouse of his own county.

§ 22. In any case in which an officer having an execution ^{2 R. C. p. 57, § 33.} on behalf of the commonwealth, shall decline levying it because of any previous conveyance, execution or incumbrance, a return shall be made setting forth the nature of such conveyance, execution or incumbrance, in whose favor and for what amount, and the court in which the conveyance or incumbrance is recorded, or from which the execution issued.

Effect of lapse of time.

§ 23. No statute of limitations which shall not in express ^{1d. p. 51, § 9.} terms apply to the commonwealth, shall be deemed a bar to any proceeding by, or on behalf of the same.

Auditor's other powers as to claims; his registry and sales of lands.

§ 24. The first auditor, with the advice of the attorney-general, may adjust and settle upon equitable principles, without ^{1823-4, p. 8, ch. 5, § 1, 3.}

regard to strict legal rules, any account or claim in favor of the commonwealth, which may at the time have been standing upon the books in his office more than twenty years; and with the like advice may dismiss any proceeding instituted by him.

1820-21, p. 9, ch.
5, § 2.

§ 25. The first auditor may appoint agents to superintend the collection of debts to, or claims of the commonwealth, and may authorize them to secure payment thereof by instalments or otherwise, and give farther credit in consideration of additional security or indemnity satisfactory to him.

2 R. C. p. 53,
§ 16.
1820-21, p. 9, ch.
5, § 4.

§ 26. When land levied on under execution on behalf of the commonwealth, will not sell for the amount thereof, the first auditor, or such agent, may purchase the said land for the commonwealth.

1821-2, p. 18, ch.
15, § 3.

§ 27. The commissioners of the revenue shall transmit to the first auditor a list of all lands in their respective districts belonging to the commonwealth, other than such as are waste and unappropriated, and including such as are escheated, and set forth in such list all the information which they can obtain in relation to the lands mentioned therein. For each tract of land or lot so mentioned by any commissioner, he shall receive one dollar from the treasury.

Id.

§ 28. The first auditor shall, in a book kept for the purpose, register all such lands as are required to be embraced in the said lists, describing when, how and of whom they were obtained, their situation, quantity, and the title thereto, together with the price paid therefor by the commonwealth.

2 R. C. p. 53,
§ 16.
1820-21, p. 9, ch.
5, § 2.
1821-2, p. 18, ch.
15, § 4, 5.

§ 29. The first auditor may sell, or appoint an agent to sell any of the said lands, on such terms as the auditor may think best, taking bond of such agent if any money is to come into his hands.

Id. § 3.

§ 30. In the book kept under the twenty-eighth section, the first auditor shall enter the time when any of the lands are disposed of, the price and terms of sale, the names of the agents and purchasers, and the amount paid into the treasury on account of the sale.

2 R. C. p. 53,
§ 16.
1820-21, p. 9, ch.
5, § 1, 2.

§ 31. For the service rendered by any agent under the twenty-fifth or any subsequent section of this chapter, the first auditor shall recommend such compensation as may seem to him reasonable, not exceeding in any case five per centum on the money actually paid into the treasury; and the governor shall authorize the payment of what may be so recommended, or of so much thereof as in his judgment may be proper.

1831-2 p. 6, ch.
4, § 1.

§ 32. Any agent selling land under the twenty-ninth section, shall, when directed, execute a deed, (with the written direction of the auditor thereto annexed,) conveying to the purchaser all the interest which the commonwealth may have in such land.

1820-21, p. 9, ch.
5, § 2.

§ 33. The first auditor shall annually report to the general assembly his proceedings under the eight preceding sections, setting forth particularly all the agents appointed by him, and their compensation, all debts collected and property purchased by them, and all arrangements made with public debtors.

CHAPTER XLIII.

MODE OF RECOVERING FINES AND ENFORCING PAYMENT INTO THE TREASURY OF THE COMMONWEALTH'S PART.

SEC.		SEC.	
1. } 4. }	How and where fines are recovered, and how disposed of.	12. } 14. }	Of fines imposed by courts.
5.	Particularly of fines under revenue laws.	15. } 19. }	List of fines returned to auditor.
6. } 11. }	Of fines imposed by justices.	20. } 22. }	How fines in list are paid into the treasury.

How fines are recovered and disposed of.

§ 1. Where any statute imposes a fine, unless it be otherwise expressly provided, or would be inconsistent with the manifest intention of the legislature, it shall be to the commonwealth and recoverable by presentment, indictment or information. Where a fine without corporal punishment is prescribed, the same may be recovered, if limited to an amount not exceeding twenty dollars, by warrant, and if not so limited, by action of debt, or action on the case, or by motion. The proceeding shall be in the name of the commonwealth.

§ 2. Such presentment, indictment or information shall be in the county or corporation wherein the offence was committed. Such warrant, action or motion, may be either in the county or corporation wherein the offence was committed, or wherein the offender resides, and such action or motion may be either in the county or corporation court, or in the circuit court of the county or corporation. Any action or motion under the thirty-ninth chapter against a personal representative, or under any section of any chapter under this twelfth title, against the secretary of the commonwealth, register of the land office, or any commissioner of the revenue, clerk, notary public, sheriff or collector, or the sureties of any of them, or against any officer or agent of any bank or joint stock company, may also be instituted or made, at the discretion of the first auditor, in the general court, or in the circuit court of *Henrico*, after thirty days' notice in the case of such motion.

§ 3. In every such action or motion, except where the recovery is limited to an amount not exceeding twenty dollars, and upon every presentment, indictment or information, a jury shall be impannelled to try the facts, if an issue of fact be made by the pleadings, or if a jury be demanded by the defendant. In every case wherein a jury is so impannelled, they shall ascertain the amount of the fine, unless it be fixed by law. Judgment shall be entered for the amount so ascertained.

1 R. C. p. 612,
§ 49; p. 614, § 64;
p. 83, § 4.
9 Leigh 666.

2 R. C. p. 61, § 12.
See ante, p. 213,
ch. 39.

1 R. C. p. 612,
§ 48.
2 R. C. p. 57, § 35.

1 R. C. p. 82, § 2.

§ 4. Although a law may allow an informer or person prosecuting to have part of a fine, the whole thereof shall go to the commonwealth, unless the name of such informer or prosecutor be endorsed on, or written at the foot of, the presentment at the time it is made, or of the indictment before it is presented to the grand jury, or of the information before it is filed, or of the writ issued in the action, or the process on the warrant, or the notice of the motion before service of such writ, process or notice.

See post. ch. 165, § 8.

§ 5. Every commissioner of the revenue shall give information to the first auditor, of any violation in his county or corporation, of any law in relation to the public revenue. And every sheriff or collector shall give information to the auditor of any violation of duty by any commissioner of the revenue for his county or corporation.

2 R. C. p. 59, § 7, § 8.

§ 6. Where any fine is imposed by a justice, which goes to the commonwealth, either wholly or in part, such justice shall, within thirty days thereafter, return to the clerk of his county or corporation court, the original proceedings and judgment whereby such fine was imposed, together with a statement of the costs thereupon. If he fail to make such return within that time, without good cause, he shall forfeit twenty dollars.

Id. § 7.

§ 7. Such justice shall issue no execution for said fine, but if he have good reason to believe that the delinquent will depart without paying it, so that an execution could not probably be levied, he may issue a warrant, and cause such delinquent to be arrested and committed to jail.

Id.

§ 8. The constable shall in no case receive such fine or costs, but the same may be paid to such justice at any time before an execution shall have issued therefor.

Id. § 8.

§ 9. If any fine shall be received by the justice imposing it, he shall pay the same into the court of his county or corporation at the next term. For a failure to make such payment, without good cause, he shall forfeit twenty dollars, which, together with the money so received, may be recovered by motion.

Id.

§ 10. The clerk shall record the judgment in a suitable book, and if the fine and costs be not paid, shall issue an execution, and afterwards such other process as may be proper, in the same manner as if such fine had been imposed by the court of his county or corporation.

Id.

§ 11. He shall include in such execution his fee for filing the papers, recording the judgment, and issuing the process, and also a fee of one dollar for services hereinafter mentioned. If the fine shall have been paid to the justice, the clerk may issue his fee bill against the delinquent for the fees hereby allowed him, in like manner as for other fees.

Id. § 13.

§ 12. No court shall remit any fine; except for a contempt, which the court during the same term may remit either wholly or in part. This section shall not impair the judicial power of the court to set aside a verdict or judgment, or to grant a new trial.

§ 13. The attorney for the commonwealth in every court ^{Id. § 2.} shall superintend the issuing of all executions on judgments in such court, for fines going wholly or in part to the commonwealth, and shall cause all delinquencies in relation to the service or return of such executions to be duly prosecuted.

§ 14. On every such judgment, if no particular directions ^{Id. § 1.} be given by such attorney, the clerk of the court shall, immediately after the term at which it is rendered, issue a writ of *fieri facias*.

List of fines returned to auditor.

§ 15. The clerk of every court shall, on or before the fifteenth day of October in each year, return to the first auditor, ^{Id. § 2. 1822-3, p. 11, ch. 9, § 2.} a list of fines imposed by his court or assessed therein, during the year ending on the last day of August next preceding, (except those cases in which executions had been issued and were not returnable before that day;) and of fines imposed by a justice and recorded in the clerk's office, pursuant to this chapter during the same year, (except as aforesaid.) Cases in which, at the time of transmitting the annual list the year before, executions had been issued, but were not returnable on or before the last day of August in that year, shall likewise be included.

§ 16. In such list there shall be stated the amount of each ^{2 R. C. p. 58, § 2.} fine, the date of the judgment therefor, and whom against; whether it has been paid in court, or whether an execution has issued therefor; what execution has issued; to what officer it has been delivered; when returnable; whether returned or not; and what return is made thereon. If the execution be returned satisfied, either wholly or in part, a copy of the return shall be certified, including the name of the officer by whom made.

§ 17. There shall be subjoined to the list a statement of ^{Id. § 2, 6.} every fine, for which an execution returnable before the commencement of the year ending on the said last day of August, may have been returned with effect, either wholly or in part, during the said year. A copy of the return on every such execution shall be certified, and likewise a statement of the proceeds of any insolvent's estate, (surrendered for a fine,) whereof a return may have been made during the said year, with the name of the sheriff making such return.

§ 18. For the services of the clerk under the three ^{Id. § 3.} preceding sections, his fee shall be one dollar upon every such fine, which fee shall be taxed in the bill of costs.

§ 19. If any clerk shall fail to transmit the list to the first ^{Id. § 4. 1822-3, p. 21, ch. 9, § 3.} auditor, within the time and in the manner prescribed, or in case there be nothing of which he can make a return, if he shall fail to certify the fact to the first auditor, such clerk, for every such failure, (unless he shew good cause therefor,) shall forfeit one hundred dollars.

Fines in list paid into the treasury.

2 R. C. p. 59, § 5.
1822-3, p. 11, ch.
9, § 1.

§ 20. Upon the receipt of the list aforesaid, the first auditor shall charge the fines therein mentioned, as follows: he shall debit the clerk with all which shall have been paid into court, and shall debit the sheriff or other officer with all which he has received, and also with the amount of any for which an execution shall have been returnable on or before the last day of August, and not returned.

2 R. C. p. 59, § 5.

§ 21. Such clerk, sheriff or other officer, shall thereupon be liable for the money so charged to him, and shall account for and pay it at the time, in the manner, under the penalties, and with the commissions prescribed as to money received by the said officers respectively, under the thirty-sixth and thirty-ninth chapters, except that no commissions shall be allowed on such payment to any officer other than the clerk.

Ante p. 194,
ch. 36; p. 213,
ch. 39.

1822-3, p. 12, ch.
9, § 4.

§ 22. If any sheriff or other officer shall pay any amount so charged him, and it shall afterwards appear by the return on the execution therefor, that nothing was received thereon, the first auditor may certify the facts to the second auditor, who shall thereupon issue a warrant on the treasury to refund the money so paid.

Title 13.

CHAPTER XLIV.

PUBLIC DEBT.

SEC.

1 } Of certificates registered in offices
to } of treasurer and first auditor.
6. }
7. } Of certificates registered in second
8. } auditor's office.

SEC.

9 } To whom payments may be made
to } as owner, and how certificates
14 } may be renewed or transferred.
15. Sinking fund provided.

Of certificates of debt.

1824-5, p. 26, ch.
29.

§ 1. If any of the old state certificates, which, by an act passed the nineteenth of January eighteen hundred and twenty-five, were required to be presented for redemption before the first day of September following, shall hereafter be produced, payment shall be made of the principal sum appearing due by such certificate, and interest thereon at the rate of six per centum per annum, to the day last mentioned.

Id.

§ 2. Upon the new certificate for twenty-four thousand and thirty-nine dollars and seventeen cents, issued in lieu of the certificates mentioned in the said act, as held by the president

and directors of the literary fund, interest shall continue to be paid annually at the rate of six per centum per annum.

§ 3. Upon the certificate for three hundred and nineteen thousand dollars, which, under an act passed the twenty-fourth of February eighteen hundred and thirty-two, was issued in favor of the said president and directors in lieu of three hundred and nineteen certificates for a thousand dollars each, purchased by them under an act passed the twenty-fourth of February eighteen hundred and sixteen, interest shall continue to be paid semi-annually on the first day of January and July, at the rate of seven per centum per annum, according to the act of the first day of February eighteen hundred and fourteen, under which the said money was borrowed.

§ 4. Upon the certificates issued under the act passed the twentieth of February eighteen hundred and thirty-three, authorizing a subscription to the stock of the *Chesapeake and Ohio* canal company, amounting to two hundred and fifty thousand dollars, interest shall continue to be paid quarterly, at the rate of five per centum per annum.

§ 5. Upon the certificates issued under the act passed the ninth of March eighteen hundred and thirty-nine, providing for subscriptions to the Exchange Bank, and Northwestern Bank of Virginia, amounting together to four hundred and fifty thousand one hundred and seven dollars, interest shall continue to be paid semi-annually, at the rate of six per centum per annum, according to the said act.

§ 6. The certificates before mentioned shall continue registered in the office in which the same are registered now, and all payments on account thereof shall be made upon the warrant of the first auditor.

§ 7. The certificates of debt now registered in the second auditor's office shall continue registered therein. All certificates for money borrowed hereafter by the board of public works shall be registered in the same office. In the book containing such registry, reference shall be made to the special act authorizing the loan.

§ 8. Every such certificate shall be signed by the treasurer and countersigned by the second auditor. All payments on account thereof shall be made upon the warrants of the second auditor.

To whom payments made; how certificates renewed or transferred.

§ 9. The person appearing, on the books of the office in which any certificate is registered, as the owner thereof, shall be deemed the owner as it regards the commonwealth, so as to make valid all payments by the commonwealth on account thereof to such person or his personal representative, made before a transfer of the certificate on the books of the said office.

1838, p. 26, ch. 12,
§ 6.
1846-7, p. 13, ch.
8, § 1.

§ 10. But if the person so appearing on the books as owner, shall, *bona fide*, and for valuable consideration, sell, pledge or otherwise dispose of such certificate to another, and deliver to him the certificate with a power of attorney authorizing the transfer thereof to him on the books of the proper office, the title of the former in the said certificate, (both at law and in equity,) shall vest in the latter for the whole amount of the certificate, or so much thereof as may be necessary to effect the purpose of the sale, pledge or other disposition; and it shall so vest, not only as between the parties themselves, but also as against the creditors of, and subsequent purchasers from the former, subject to the preceding section.

Id. § 2, 8.
1847-8, p. 14, ch.
8, § 1.
See post. ch.
129, § 1.

§ 11. Upon the delivery of the said certificate at the office in which it is registered, a transfer may be made on the books of the said office, either of the whole amount, or of any part thereof, by the person appearing on the said books as the owner, or by another having a power of attorney from him, duly authenticated, authorizing such transfer. Upon a transfer the former certificate shall be cancelled, and one or more new certificates shall be issued, not exceeding together the amount of that cancelled. But no transfer shall be made on the said books within ten days next preceding the first day of January, or the first day of July.

2 R. C. p. 9, ch.
180, § 1.

§ 12. The auditor in whose office any certificate is registered shall, when applied to, cancel it and issue new certificates, not exceeding together the amount of the former.

§ 13. Every cancelled certificate shall remain filed in the treasurer's office. Every new certificate shall be registered, signed and countersigned like the former certificate.

1838, p. 26, ch.
12, § 8.
1846-7, p. 13, ch.
8, § 2.

§ 14. When any certificate shall be lost by the holder thereof, he may produce to the auditor in whose office the said certificate is registered, proof of his having advertised the same once a week for three months in a newspaper, file in the office of the said auditor an affidavit setting forth the time, place and circumstance of the loss, and execute a bond to the commonwealth, with one or more sureties approved by the said auditor, conditioned to indemnify all persons against any loss in consequence of issuing a new certificate in place of the one so lost; and thereupon the said auditor may issue a new certificate and register the same.

Sinking fund provided.

1834-5, p. 7, ch. 4.
1845-6, p. 162,
No. 6.
1848-9, p. 8,
ch. 3.

§ 15. The sum of one hundred thousand dollars shall annually be paid out of the treasury on the order of the board of public works, and be applied by the board, from time to time, in payment of certificates of debt of this state which are redeemable. If the funds in the treasury be insufficient in any year to pay said sum, the board may borrow on the state's credit so much as is necessary to make up the same; and if said sum be insufficient in any year to pay all the cer-

tificates redeemable in such year, the board may borrow on the state's credit, so much as may be necessary to pay all of said certificates of which payment is demanded. No loan under this section shall be for a longer time than one year.

Title 14.

CHAPTER XLV.

MANNER OF RECEIVING AND DISBURSING AT THE TREASURY, AND DUTIES OF THE AUDITORS AND TREASURER.

SEC.		SEC.	
1. } to } 10. }	As to all the said officers.	22. } to } 25. }	Of the books and accounts in the first auditor's office.
11. } to } 14. }	The first auditor; what claims he may allow.	26. } to } 28. }	Of the accounts in the second auditor's office.
15. } 16. }	As to oaths in support of claims; and claimant's authority.	29. } to } 34. }	Of the duties in treasurer's office.
17. } 18. }	The second auditor; what claims he may allow.	35. } to } 37. }	Reports to general assembly.
19. } 20. }	Warrants to receive from or pay into the treasury.		
21. }			

As to all the said officers.

§ 1. All moneys to be paid into the public treasury of this state, shall be paid by the person liable to pay the same, or his agent, into one of the banks in the city of *Richmond*, in the following manner: A warrant shall be obtained from the first auditor or the second auditor, as the case may be, directing the treasurer to receive the sum to be paid; the treasurer shall by his order upon the said warrant require the cashier of one of the said banks to receive the sum therein mentioned; and upon receiving the same, the proper officer of the bank shall give a certificate on the same warrant that the said sum has been paid into such bank to the credit of the treasurer. Upon the return of the warrant, order and certificate, the treasurer shall give a receipt for the sum so paid; and upon the same being delivered to the auditor who may have issued the warrant, he shall grant a receipt therefor.

§ 2. Any person bound to pay money into the public treasury, who shall pay the same otherwise than according to the preceding section, shall remain liable for such money, and be subject to every fine, forfeiture or penalty to which he would have been subject if he had not paid the same.

§ 3. All moneys paid into bank according to the first section, shall stand on the books of the bank to the credit of the

treasurer of the state. But the treasurer shall have no authority to draw any of the said money except by his check drawn upon a warrant issued by one of the auditors. If any money in bank to his credit as aforesaid, shall be paid otherwise than upon his check drawn upon such warrant, the payment shall not be valid against the commonwealth.

1819-20, p. 12, ch. 9, § 4.

§ 4. The hours for transacting business in the offices of the two auditors and the treasurer shall be as follows: from eight in the morning until three in the afternoon between the first day of April and first day of November, and from nine in the morning until three in the afternoon during the rest of the year.

2 R. C. p. 2, § 2.

§ 5. The proceedings of each of the said officers shall be entered in books kept for the purpose, and the books, vouchers and papers properly arranged and preserved.

Id. p. 4, § 14.

§ 6. The governor shall examine the accounts for the necessary contingent expenses of each of the said offices, and certify for payment such as he may approve.

Id. p. 3, § 7, 8.
1822-3, p. 9, ch. 4.
1829-30, p. 10, ch. 7.
1840-41, p. 50, ch. 19, 20.

§ 7. When it is necessary for either of the said officers to be absent from his office, the others shall be informed thereof. During such absence, if it be not for more than a day at a time, the duties of the officer so absent shall be performed by the first clerk in his office.

Id.

§ 8. When such absence is to be for more than one day at a time, notice thereof shall be given to the governor, who may thereupon authorize the duties of such officer to be performed during his absence, by the first clerk in his office, of which authority, information shall be given to the other two of the said officers.

1840-41, ch. 19, § 2.

§ 9. The said officers and their sureties shall be liable for any default or breach of duty of their first clerks respectively during their absence.

2 R. C. p. 4, § 15.

§ 10. The fiscal year shall commence on the first day of October and end on the thirtieth day of September.

The first auditor; what claims he may allow.

Id. p. 2, § 2, p. 50, § 6.

§ 11. Any person having any pecuniary claim against the commonwealth upon any legal ground, may present the same to the first auditor, except in those cases in which the claim, if allowed, would be chargeable to the literary fund or the fund for internal improvement, or any corporation composed of officers of government, of the funds and property of which the state is sole owner.

Id. p. 2, § 2.

§ 12. Every claim authorized to be presented to the first auditor shall be examined by him, and he shall allow so much on account thereof as may appear to be due.

1838, p. 28, ch. 14, § 3.
See post. ch. 210, § 7, 8.

§ 13. For services rendered or expenses incurred in the arrest of a criminal, or about a criminal prosecution for which no particular provision is made by law, or for a sum on account of a list of insolvents, whether of taxes, militia fines, or

other public dues, or any other account which it would have been legal to pay, if presented within the time prescribed by the laws relating to such subjects, but which cannot be allowed by the first auditor under the two preceding sections, because not presented within the time so prescribed; it shall be lawful for the first auditor, within three years after the claim might have been presented, if he be of opinion that such claim ought to be paid, to lay the same before the governor, and so much thereof shall be paid as the governor may direct.

§ 14. No claim shall be allowed by the first auditor after ten years from the time when it might by law have been presented for payment. 1842-3, p. 17, ch. 9, § 1.

§ 15. The first auditor may administer oaths to be taken in support of any claim presented to him in his official character. 1820-21, p. 10, ch. 6.

§ 16. When application is made by an agent of any pensioner for his half yearly pension, the agent shall produce a power of attorney authorizing him to receive the same, with a certificate of a justice that such power has been acknowledged. There must be endorsed on the power a certificate by the justice or first auditor to the following effect: 2 R. C. p. 7, ch. 177.

A. B., to whom the within power of attorney is granted, this day appeared before me, a justice for the county (or corporation) of _____, (or before me, the first auditor,) and made oath that the said power is not given by reason of any transfer, mortgage or sale of the said pension, or any part thereof, to the said attorney for his own use, but that the pension to be received is for the sole use and benefit of C. D., the within named pensioner.

The second auditor.

§ 17. Any person having any claim against the board of the literary fund, or the board of public works, or any corporation composed of officers of government, of the funds and property of which the state is sole owner, may present the same to the second auditor, who, after being authorized by the proper board, shall allow so much thereof as may appear to be due. 1822-3, p. 50, ch. 45, § 2.

§ 18. No such claim shall be allowed, after ten years from the time when it might by law have been presented for payment. 1842-3, p. 17, ch. 9, § 1.

Warrants to receive from or pay into the treasury.

§ 19. After any claim is allowed under this chapter, a warrant shall issue for the sum to be paid. It shall be issued by the first auditor when the same is allowed under the eleventh, twelfth or thirteenth sections, and by the second auditor when it is allowed under the seventeenth section. Every such warrant shall be signed by the auditor issuing the same, and attested by one of his clerks. 2 R. C. p. 2, § 2. 1822-3, p. 50, ch. 45, § 2.

2 R. C. p. 4, § 14.
1822-3, p. 50, ch.
45, § 2. § 20. All warrants upon the treasurer to receive money shall be drawn by the first auditor, except those on account of the corporations mentioned in the seventeenth section, which shall be drawn by the second auditor.

2 R. C. p. 4, 5, §
16, 17. § 21. Every warrant shall express the particular head of general revenue or expenditure, on account of which the money is received or paid. And where the money is due for, or chargeable upon, the revenue of the past year, that also shall be expressed.

Of the books and accounts in the auditor's offices.

Id.
1822-3, p. 10, ch.
5. § 22. There shall be kept on the books in the first auditor's office, an account against the treasurer, and a separate account for the contingent expenses of the court of appeals, general court, and circuit courts, to which account shall be placed allowances made to officers and servants, and for fuel, stationery, furniture and office rents.

1825-6, p. 10, ch.
10, § 1.
1830-31, p. 133,
ch. 64. § 23. The first auditor may, from time to time, arrange in boxes all such old books and papers belonging to his office, as in his opinion may be dispensed with for ordinary use or reference, and deposit such boxes with appropriate labels, in some apartment of the capitol not otherwise occupied, taking a list or schedule of the books and papers so put in boxes, and preserving such list in his office.

1819-20, p. 11, ch.
9. § 24. On the last day of each quarter of the fiscal year, the first auditor shall compare the books of his office with those in the treasurer's, and strike the balance on his books, shewing the amount of money in the treasury, which balance he shall carry forward to the next quarter.

2 R. C. p. 2, § 2.
1819-20, p. 11, ch.
9, § 1.
1826-7, p. 13, ch.
10. § 25. All unsettled accounts on the books of the first auditor shall be balanced on the last day of each fiscal year, and the balances brought forward on the first day of the new fiscal year. For this purpose there shall be a general ledger of accounts, which shall be so kept as to shew all the balances due to or from the commonwealth.

1822-3, p. 50, ch.
45, § 2. § 26. Distinct accounts shall be kept in the second auditor's office, of the receipts and expenditures of each of the corporations, mentioned in the seventeenth section. All books and papers connected therewith, shall remain in the said office, which shall be the office of each of the said corporations.

1831-2, p. 14, ch.
14. § 27. The second auditor shall be secretary for each of the said corporations. By consent of either board, his first clerk may be assistant secretary, and as such perform any duty devolved upon the secretary.

1822-3, p. 50, ch.
45, § 2. § 28. The salaries of the second auditor and his clerks shall be chargeable one-half to the fund for internal improvement, and the other half to the literary fund.

Of the duties in the treasurer's office.

§ 29. The treasurer, on his books, shall state the accounts 2 R. C. p. 4, § 12 of money received and paid, so as to shew distinctly the nett produce of each branch of the revenue, and the whole amount thereof, and also the amount of disbursements.

§ 30. He shall keep separate accounts of the money belong- 1822-3, p. 51, ch. 45, § 3. ing to the literary fund, to the fund for internal improvement, 1827-8, p. 11, ch. 12, § 2. and to the *Washington* monument fund, shewing the receipts and disbursements on account of each.

§ 31. He shall keep a list of the warrants drawn upon the 2 R. C. p. 5, § 21. treasury in every fiscal year, numbered from one upwards.

§ 32. The treasurer shall furnish the first auditor at the Id. § 21, 22. expiration of each quarter of the fiscal year, with a list of the receipts and a list of the payments at the treasury, during such quarter, shewing the number, date and amount of each warrant, and in whose name the money was received, or the warrant issued, placing in separate columns the amount of each warrant under which money was received or paid in a different fiscal year from that in which it was issued. The first auditor may, however, dispense with such lists at the end of any particular quarter, if he finds that the purpose thereof can be as well attained by examining the treasurer's books for such quarter.

§ 33. The treasurer shall keep a general ledger of accounts, 1819-20, p. 11, ch. 9, § 2. into which he shall post all the receipts and disbursements at his office, arranging the disbursements under the heads to which they properly belong. There shall be opened on the said ledger a general account of receipts and disbursements, which, on the last day of each quarter of the fiscal year, he shall compare with the books kept by the auditors. After they are made to correspond, he shall strike the balance on the said account, showing the amount at that time in the treasury, which balance shall be carried forward to the general account for the next quarter.

§ 34. He shall keep accounts on the books of his office Id. with the different banks in which the public money is deposited, on which accounts balances shall be struck at the same periods, shewing the amount in bank to the credit of the treasurer at the end of each quarter.

Reports to the general assembly.

§ 35. Each auditor and the treasurer shall annually, before 1822-3, p. 12, ch. 10, § 1. the first day of November, make a report to the governor, 1846-7, p. 241, Res. No. 19, § 1. which he shall deliver to the public printer.

§ 36. The annual report of the first auditor shall contain a 2 R. C. p. 4, ch. 174, § 15; p. 6, ch. 175. statement of the receipts and expenses of the preceding fiscal year, and an estimate of the revenue and expenditures for the 1834-5, p. 10, ch. 9. succeeding year. It shall also contain a list of all accounts remaining open on the books of his office at the close of the

preceding year, on charges made or credits given within such year. The report shall be accompanied with such remarks as may serve to explain the account of receipts and expenses, and with marginal notes explanatory of the balances reported. In it the auditor shall point out any defects which may occur to him in the revenue laws, and suggest the proper remedies. And if, in his opinion, the future revenue be likely to prove insufficient, he shall recommend plans for increasing the revenue, suggesting such new subjects of taxation, or such additional taxes on the old, as he may deem proper.

2 R. C. p. 4, ch.
174, § 15.
1822-3, p. 51, ch.
45, § 3.
1827-8, p. 11, ch.
12, § 2.

§ 37. The annual report of the treasurer shall state particularly the amount and condition of the *Washington* monument fund, as well as the receipts and disbursements on account of the literary fund, and the fund for internal improvement, and also contain an account of the other receipts and disbursements, and of the treasurer's transactions generally during the fiscal year.

Title 15.

CHAPTER XLVI.

MODE OF RECOVERING CLAIMS AGAINST THE STATE OR AGAINST CORPORATIONS COMPOSED OF OFFICERS OF GOVERNMENT.

SEC.

1. }
to } As to claims against the state.
6. }

SEC.

7. } Where suit is against a public offi-
8. } cer or public corporation, or to
injoin judgment or decree of the
commonwealth.
9. Limitation of suits against the state
or against state corporations.

2 R. C. p. 2, § 6.
1838, p. 27, ch. 14.

§ 1. When the first auditor shall disallow either in whole or in part any such claim against the commonwealth as is provided for by the eleventh section of the forty-fifth chapter, the person presenting such claim may petition the circuit court of *Henrico* for redress. And where a person has any other claim against the commonwealth, redress may be obtained in the said court, by a petition or by a bill in chancery, according to the nature of the case.

Ante p. 234, ch.
45, § 11.

Id.

§ 2. In every such case, the first auditor shall be a defendant. He shall file an answer stating the objections to the claim. And the cause shall be heard without any unnecessary delay, upon the petition, or bill, and answer and the evidence.

Id.

§ 3. The court may cause a jury to be impaneled to ascertain any facts which may be disputed, or the amount of any claim which may be unliquidated. Its judgment shall be such as the law, or its decree such as equity, may require.

§ 4. No judgment or decree shall be entered for the half^{1842-3, p. 66, ch. 89, § 3.} pay for life of any officer, or arrears of, or commutation for, such half pay until it be shewn to the satisfaction of the court that the case is prosecuted with the knowledge and at the instance of the officer himself, or if dead, of some *bona fide* creditor of such officer, or of his lawful distributees, or their guardian, if they be infants, or of some one of them.

§ 5. If witnesses be sworn before the court or jury, and^{1838, p. 27, ch. 14.} either party require it, the court shall certify what facts were proved by such witnesses, and such certificate shall be a part of the record.

§ 6. No judgment or decree against the commonwealth,^{1830-31, p. 129, ch. 57.} exceeding three hundred dollars, shall be paid without a special^{1838, p. 28, ch. 14, § 2.} appropriation therefor by law.^{1842-3, p. 18, ch. 9, § 3.}

§ 7. All suits, in which it may be necessary or proper to^{1 R. C. p. 202, § 29.} make any of the following public officers a party defendant^{1845-6, p. 12, ch. 5, § 1.} as representing the commonwealth, to wit: The governor, attorney-general, treasurer, register of the land office, or either auditor, or in which it may be necessary or proper to make any of the following public corporations parties defendants, to wit: the board of the literary fund, board of public works, or any other public corporation composed of officers of government, of the funds and property of which the commonwealth is sole owner, or in which it shall be attempted to injoin or otherwise suspend or affect any judgment or decree on behalf of the commonwealth, obtained in the general court or any circuit court holden in the city of *Richmond*, or any execution issued on such judgment or decree, shall be brought and prosecuted in the circuit court for *Henrico*, of law or chancery as the case may be.

§ 8. If any such suit be now depending, or be hereafter^{1a.} brought in any other court, such court shall, by its order made therein, transfer such suit, together with all the papers and proceedings therein, to such court as is designated in the preceding section, there to be proceeded in to a final decision. And if such suit be not so transferred, but be proceeded in to judgment or decree in the court wherein it may have been so depending or brought, such judgment or decree, so far as it is against any of the said public officers or public corporations, or against the commonwealth, shall be void.

§ 9. No such petition or bill as is mentioned in the first section shall be presented or filed, and no such suit as is mentioned in the seventh section, shall be brought, after ten years from the time the claim might have been presented or asserted.^{1842-3, p. 18, ch. 9, § 2.} If, however, the person having such claim was an infant, married woman, insane or imprisoned, at the time the same might have been presented or asserted, such petition or bill may be presented or filed, and such suit may be brought, within five years after the removal of such disability.^{1 Leigh 525.}

Title 16.

COUNTIES AND TOWNS, AND THEIR OFFICERS.

- CHAP. 47. Of new counties, and the right of counties to sue.
 48. Of justices of the peace.
 49. Of sheriffs, sergeants, coroners and constables.
 50. Of courthouses, clerks' offices, jails and jailors.
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CHAPTER XLVII.

OF NEW COUNTIES, AND THE RIGHT OF COUNTIES TO SUE.

- | SEC. | | SEC. | |
|------|---|------|---|
| 1. | Notice of petition for new county; how given, and what to contain. | | evidence. Surveyors compensated. |
| 2. | Proof of notice; when to be produced to sheriff. | 8. | Duty of surveyors as to entries for land remaining to be surveyed within the new county; penalty for failure to perform it. |
| 3. | How polls, to be taken for and against new county. | 9. | Jurisdiction and authority of courts |
| 4. | Who entitled to vote on the question. | 10. | and officers in counties from which new county is formed. |
| 5. | Penalty on officers for failure of duty. | 11. | How taxes and levies assessed, militia fines and officers fees issued, and process delivered before the time for holding a court in new county, are to be collected and executed. |
| 6. | Copies of polls, notices, &c. to be transmitted to clerk of house of delegates; when and by whom. | 12. | Right of counties to sue. |
| 7. | Boundary line of new county, how surveyed; survey reported; where recorded, and its effect as | | |

Notice of petition for, and mode of taking poll for and against, new county.

1838, p. 51, ch.
58, § 1.
1846-7, p. 55, ch.
57, § 1.

§ 1. When it is intended to petition the general assembly to create a new county, notice of such intention shall be posted on a court day, at least sixty days next preceding the annual election of delegates to the general assembly, at the front door of the courthouse of the counties from which the new county is proposed to be formed, which notice shall set forth the names of such counties, the metes and bounds proposed for the new county, and the place at which it is proposed to establish the seat of justice thereof.

1846-7, p. 55, ch.
57, § 2.

§ 2. At least fifteen days before the said election, there shall be produced to the sheriff of every such county a copy of the said notice, with an affidavit that such notice had been so posted in each of the counties from which the new county is proposed to be formed, which affidavit shall be signed by the affiant and attested by a justice.

1838, p. 51, ch.
58, § 2.
1839, p. 30, ch.
49.

§ 3. If a copy of the said notice with such affidavit be so produced to any such sheriff, he shall cause poll books to be

prepared, with a caption stating the counties from which the new county is proposed to be formed, and the metes and bounds and seat of justice proposed therefor, and with two columns at the head of one of which shall be written, "for the new county," and at the head of the other, "against the new county;" and the polls for and against such new county, shall, so far as consistent with this chapter, be taken, certified and delivered to the clerk of the court, at the same time and places, by the same persons, and under the same regulations and restrictions, as the polls for a delegate to the general assembly. The copies of the notice, and the affidavits and certificates, produced to the sheriff, shall accompany said polls. If at any place for opening said polls, no vote be polled for or against the new county, that fact shall be certified on the poll book.

1846-7, p. 56, ch. 57, § 3, 4, 5

§ 4. Any white male citizen of the commonwealth, aged twenty-one years or upwards, residing within any of the counties, from which the new county is proposed to be formed, who may be qualified to vote in the county of his residence for members of the general assembly, or who shall have been assessed with any part of the levy of his county within the preceding year, and shall actually have paid the same, may vote in the county in which he resides, at any poll so opened; and the names of such of the voters as reside within the metes and bounds of the proposed new county, shall be distinguished from the rest.

§ 5. If any commissioner or other officer shall fail to perform any duty prescribed by the third section, he shall pay a fine of not less than fifty, nor more than one hundred dollars.

1846-7, p. 56, ch. 57, § 6.

§ 6. A copy of the polls delivered to the clerk, the said copies of the notice, and the affidavits and certificates, shall be transmitted by the said clerk to the clerk of the house of delegates, at least ten days before the commencement of the next general assembly.

Id. § 5, 6.

Duties of surveyors as to new county.

§ 7. The boundary lines designated in the act creating any new county, shall be run and marked by the surveyor thereof and the surveyors of the counties out of which the same may be formed. They shall make a report to the court of each of the said counties, and also to the board of public works, of their proceedings, accompanied by a plat showing the courses and distances, and the streams and other natural or artificial objects or points referred to in the act, which report and plat shall be recorded in the office of each of the said courts, and shall be conclusive evidence of the true boundary lines. Each of said counties, whose surveyor may act, shall allow him compensation therefor, which shall be chargeable on said county.

1844-5, p. 37, ch. 40, § 1.

§ 8. Within one month after the boundary lines of such

1 R. C. p. 338, ch. 86, § 70.

new county may be so run and marked, the surveyors of the counties, out of which the same may be formed, shall make out attested copies of all entries for lands in such new county, remaining to be surveyed; and shall, on the application of the surveyor of the new county, deliver the same with the warrants on which the entries were founded, to such surveyor, upon his paying five cents for every such attested copy. Any surveyor failing to comply with this section, shall forfeit one hundred and fifty dollars.

Powers of courts and officers of counties from which new county is formed.

§ 9. The courts which at the time of the passage of the act creating a new county had a jurisdiction over the counties from which it is formed, and the justices, sheriffs and other officers of those counties, shall, until a court is held for the new county, continue to have and exercise all the jurisdiction, power and authority which they had at the time of the passage of such act.

§ 10. The courts first mentioned in the preceding section, may, after the time of holding a court for the new county, continue to exercise jurisdiction over all cases depending in the said courts at that time; or the court wherein any case is so depending, of which a court of the new county would have had jurisdiction if brought after the said time, may remove such case to the circuit court of the new county, if the case was depending in a circuit court, or to the county court of the new county, if the case was depending in a county court.

§ 11. All taxes and levies assessed or laid by the commissioners of the revenue or court of any county from which the new county is formed, before the time of holding a court for such new county, and all militia fines and officers' fees in the hands of any sheriff or other officer at that time, shall be collected, accounted for and paid, and all process and precepts delivered to such sheriff or other officer, before that time, shall be executed, returned and satisfied in like manner, and such sheriff or other officer shall have the like powers in respect thereto, as if such act had not passed.

Right of counties to sue.

2 R. C. p. 236, ch.
236, § 9.
1836-7, p. 137, ch.
142, § 5.

§ 12. Counties may sue in their own names for forfeitures, fines or penalties given by law to such counties, or upon contracts made with them.

CHAPTER XLVIII.

OF JUSTICES OF THE PEACE.*

SEC.

1. When new county created, who to be commissioned justices thereof.
2. County courts not to recommend justices, unless the acting justices are previously summoned, or a majority be present; certificate by the clerk to be sent with recommendation.
3. Case in which the governor may commission without recommendation.

SEC.

4. Commission void if oaths not taken within six months.
5. Removal from county, or accepting or holding certain offices, vacates commission of a justice.
6. The mayor, recorder and each alderman of a town, *ex officio* a justice thereof.
7. Justices may administer oaths, except in certain cases.

§ 1. On the creation of any new county, such persons residing within the limits thereof as may at the time be justices of any county from which the same is formed, shall be justices for the new county, and the governor shall commission them in point of seniority according to the dates of their previous commissions. If there be not twelve such justices, he shall appoint so many other persons justices for the new county as will make the whole number twelve.

§ 2. No county court shall recommend to the governor persons to be appointed justices, unless either a majority of the acting justices of such county be present at the time of such

¹ R. C. p. 244, ch. 71, § 2.

⁴ Grat. 281.

* In 1623-4, courts were directed to be kept once a month in the corporations of *Charles City* and *Elizabeth City*. Hen. Stat., vol. 1, p. 125. Afterwards, under an order of the governor and council, made the 7th of March 1628-9, and an act of 1631-2, commissioners were appointed to hold monthly courts in some of the more remote plantations. Id. 132-3, 168-9. They were styled commissioners of the county courts. Id. 273. During the time of the commonwealth (in 1652,) it was first ordered that they be chosen by the house of burgesses. Id. 372; then (in 1653,) that "the governor and council should appoint commissioners in each county, upon the recommendation of the persons from the commissioners of the several county courts, as they see cause to allow such recommendations." Id. 376, 402. The act of 1661-2, reciting that "The great number of commissioners in each county hath rendered the place contemptible and raised factions among themselves, rather than preserved the peace of the people," enacted "that the commissioners in each county be restrained to the number of eight." Id. vol. 2, p. 21, ch. 9. When in 1661-2 they were called justices of the peace, the number was still eight. Id. vol. 3, p. 89, ch. 31; but four might constitute a court. Id. vol. 3, p. 507. The provision of the constitution adopted in 1776 was simply that the governor, with the advice of the privy council, shall appoint justices of the peace for the counties, and in case of vacancies, or a necessity of increasing the number thereafter, such appointments to be made upon the recommendation of the respective county courts. The provision in the amended constitution will be seen in article 5, § 7, ante p. 44. The revisors, not considering the constitutional provision as preventing the legislature from providing by law that the justices should not be increased beyond a certain number, and deeming some limitation upon the number expedient, reported, (p. 265 of their reports,) as one of the sections of this chapter, the following:

"Hereafter, no justices shall be recommended or appointed in any county which may be entitled to choose 3 delegates to the general assembly, when there are 40 acting justices in such county; nor in any county entitled to choose 2 delegates, when there are 30 acting justices therein; nor in any county entitled to choose 1 delegate, when there are 20 acting justices therein; nor in any other county, when there are 15 acting justices in the said county."

This section was struck out by the committee on revision. See p. 63 of committee's amendments.

recommendation, or the acting justices of the county shall have been summoned to attend at that time to act on the subject, under an order made at a previous term. With such recommendation, the clerk shall certify the names of such persons (if any,) as have ceased to be acting justices since the last annual return to the executive, the names of those present at the time of making the recommendation, and if any order was made at a previous term directing the justices to be summoned, a copy of such order and of the sheriff's return thereon.

1 R. C. p. 143, ch.
46, § 7.
1843-4, p. 44, ch.
49.

§ 3. If the justices of any county shall, at any time, be reduced below the number necessary to form a court, the governor shall appoint others, so that the whole number shall not exceed seven.

1838, p. 67, ch.
79.

§ 4. If any person, appointed justice of any county, shall fail to take the oaths prescribed by law, within six months after the date of his commission, it shall be void.

1 R. C. p. 261,
ch. 71, § 81.
1821-2, p. 267, ch.
26.
1823-4, p. 92, ch.
88.
1828-9, p. 32, ch.
35.
2 Leigh 743.
3 Leigh 802.
4 Leigh 643.

§ 5. If any person so appointed, shall remove from the county for which he was commissioned, with an intention of changing his residence, or shall accept or hold any office under the government of the *United States* other than is allowed by the 12th chapter, or the office of mayor, recorder or alderman for any town having a hustings court, or the office of clerk of a court, sergeant, coroner or constable, or deputy of either, or the office of deputy sheriff, or any other office incompatible with that of justice, except the office of high sheriff, such removal, acceptance or holding, shall vacate the commission of justice.

2 R. C. p. 322,
ch. 261, § 2.

§ 6. Every person holding the office of mayor, recorder or alderman of any incorporated town, shall, by virtue of such office, be a justice of the said corporation.

1 R. C. p. 214,
§ 84, p. 255, § 44.

§ 7. Any oath required to be taken, which is not of such a nature that it must be taken in court, may be administered and certified by a justice, unless otherwise provided.

CHAPTER XLIX.

OF SHERIFFS, SERGEANTS, CORONERS AND CONSTABLES.*

SEC.	SEC.
1. Sheriffs; how nominated and appointed.	ther nominee to be appointed. Penalty on clerk failing to certify.
2. Who appointed, if all the justices refuse the office.	5. Bond to be given by sheriff.
3. Term of office.	6. His re-appointment; continuance in office without re-appointment.
4. If person appointed fail to qualify, clerk to certify the fact, and ano-	7. Sergeants; corporation courts to

* In 1634, when the colony was divided into eight shires, to be governed as the shires in *England*, it was provided that *sheriffs* should be elected to have the

SEC.		SEC.	
	appoint and take bonds of; their power and duties.		returned, and in what time; and penalty for failure.
8.	Vacancy in office of; how filled.	29.	If failure continued, penalty to be repeated.
9.	Bonds of sheriffs and sergeants to be sent to first auditor.	30.	Process, &c., may be sent by mail; what shall be evidence of its being sent and received.
10.	Coroners; appointment and term of office of.		Claims and allowances directed by court to be paid out of county levy, to be received in payment of taxes, levies, &c., and receipts therefor to be given.
11.	Constables; appointment, removal to and bonds of.	31.	
15.		32.	
16.	Deputy sheriffs, sergeants and coroners; how appointed and removed, and their powers and liabilities until removed.	33.	Growing crops not to be levied on or distrained, except indian corn, after the 15th October.
17.		34.	Certain property of a husband or parent, exempt from levy or distress.
18.		35.	Slaves not to be levied on or distrained, if there be other property.
19.	On the death of sheriff or sergeant, a collector of taxes, &c., may be appointed; bond to be given by him and sent to auditor.	36.	Officer to provide sustenance for slaves and live stock, and not to carry property levied on, out of his county.
20.	Powers, duties and liabilities of collector and his deputies.	37.	When and how property to be sold, and notice to be given of time and place of sale.
21.	When coroners or constables may act in place of sheriff, and their liabilities.	38.	
22.		39.	Judgment to be given on motion against officer, &c. for money appearing by his return to be due from him.
23.		40.	
24.	When and how crier or other person may be appointed to perform duties of sheriff or sergeant.	41.	Judgment for principal officer against his deputy, &c.; to be recovered, when and how.
25.	Where process may be executed; when and how power of the county may be summoned to aid therein; penalty for disobedience to such summons.	42.	
26.	Who are privileged from arrest under civil process. Such process not to be executed on Sunday.	43.	In what court motions may be made.
27.	What obligations may be taken by officers <i>virtute officii</i> .		
28.	How and where process shall be		

Of the appointment of sheriffs and sergeants, and of their official bonds.

§ 1. The court of every county shall annually at its November term, or so soon as may be thereafter and before the ensuing April term, and at any other time, when there is no person acting in such county as sheriff or deputy sheriff thereof, nominate three of the justices of such county to the governor, who may appoint one of them sheriff. 1 R. C. p. 276, ch. 78, § 1, 5. 1820-21, p. 28, ch. 29, § 1. 1823-4, p. 29, ch. 26, § 1, 2.

§ 2. If all the justices for any county refuse to accept the office of sheriff, the court of such county may nominate three other persons residing therein to the governor, who may appoint one of them to the said office. 1 R. C. p. 277, ch. 78, § 7, 8, 9.

§ 3. The commission to any person appointed sheriff, when issued before the first day of June in any year, shall be until the March term of the county court for the next year, and Id. p. 278, § 10. 1820-1, p. 28, ch. 29, § 1. 1823-4, p. 29, ch. 26, § 2.

same power as there, and *sergeants* and *bailiffs* where need required. Hen. Stat. vol. 1, p. 224. It was enacted in 1642-3, that no sheriff should retain the office longer than a year in one county; id. p. 259, 442; in 1655-6, that the commissioners of every county should recommend three or more to the governor and council, who should elect such sheriffs out of those so recommended, as they should think most fit for the place; id. p. 392, ch. 6; and in 1660-61, that the sheriff's place should be conferred on the first in commission, and so devolve to

5 Leigh 392.

when issued after the first day of June in any year, shall be until the March term of the county court for the year succeeding the next. In either case it shall further be, until a successor shall be duly qualified. The commission shall be sent to the clerk of such court, who shall forthwith inform such person of his appointment.

1 R. C. p. 276,
277, § 3, 4.

§ 4. If any person appointed sheriff of any county shall not, within two months after his appointment, enter into the bond required by the following section, the clerk of the court of such county shall, within one month thereafter, transmit a certificate of the fact to the governor, who shall thereupon, unless good cause be shewn to the contrary, commission some other person nominated by the court, which commission shall supersede the former. Any clerk, failing to perform the duty required of him by this section, shall forfeit one hundred dollars.

1 R. C. p. 278, ch.
78, § 11, 12, 13.

§ 5. The county court shall take from every person appointed sheriff of such county, a bond in such penalty as it may deem sufficient, not being less than thirty thousand dollars, nor more than ninety thousand dollars.*

1 R. C. p. 277, § 6.
1820-21, p. 28, ch.
29, § 1.
1823-4, p. 29, ch.
26.

§ 6. Any person commissioned sheriff, who gives such bond and takes the oaths prescribed by law, may be re-appointed for one year next after the expiration of his first commission, and no longer, except as follows: If at or before the April term next after his office would have expired, had a successor quali-

5 Leigh 392.

every commissioner in course. Id. vol. 2, p. 21, ch. 9. The act of 1661-2, gave the governor more discretion. Id. 78; and the revised act of 1705 allowed him to commission such one of the three recommended as to him should seem meet. Id. vol. 3, p. 246-7. It also allowed a sheriff to be continued in office two years. Id. In 1710 a penalty was imposed on a person commissioned sheriff who should refuse to accept the office; if the county court failed to recommend, the governor might appoint to be sheriff, any justice in commission; and if a sheriff died, provision was made for appointing his successor. Id. p. 500; vol. 4, p. 84, 300. Similar provisions are found in the revised acts of 1748. Id. vol. 5, p. 515. In 1775, during the *interregnum*, the necessity of a recommendation was dispensed with and the power of appointment conferred on the county courts. 9 Hen. Stat. p. 93. But in 1776, it was provided by the constitution that "sheriffs and coroners shall be nominated by the respective courts, approved by the governor, with the advice of the privy council and commissioned by the governor;" and that "the justices shall appoint constables." For the provision of the amended constitution, see article 5, § 8, ante, p. 44.

There seem to have been *coroners* in *Virginia* before 1677, and *constables* before 1794; the fees of both were regulated. Hen. Stat. vol. 2, p. 325, 355, 419; vol. 4, p. 73, 350, 418, 503. In 1765 a coroner was made liable like a sheriff for breach of duty in a civil case, vol. 8, p. 119; and in 1769 he was required to give bond with security before serving an execution. Id. p. 327-8. In a note to chapter 81, vol 1st of the Code of 1819, *Mr. Leigh* states that "the act passed at the revisal of 1792 was the first statute passed in *Virginia* regulating the duties of coroners, but the British statutes being prior to the 4th Jac. 1, were in force in the colony." He is referring particularly to their duties in respect to inquests; as to which, see *post*. ch. 202.

* This section was introduced at the late revision in lieu not only of the sections of the Revised Code of 1819 noted in the margin, but in lieu also of the following, viz: 2 R. C. p. 65, § 11; 1820-21, p. 28, 29, ch. 29, § 2, 4; 1830-31, p. 85, ch. 24; 1844-5, p. 56, ch. 63. By these a sheriff was required to give three separate bonds with special conditions to each for the performance of enumerated duties, and also for the faithful performance of the duties of his office in all other things. Hereafter the sheriff will be required to give but one official bond, with a simple and comprehensive condition for the faithful discharge by him of the duties of his office. See *ante*, p. 88, ch. 13, § 8.

fied as early as he might, no person shall be qualified as such successor, the sheriff in office shall be deemed appointed to continue in the said office until the following March term of said court, provided he shall at said April term enter into the bond and take the oaths prescribed by law. And so he may be continued in office from year to year, until a successor shall be duly qualified. But if the sheriff in office shall not give such bond and take such oaths at the said April term, the office shall then be deemed vacant.

§ 7. In each incorporated town, the corporation court shall annually appoint a sergeant and take from him a bond in such penalty as it may deem sufficient. The sergeant shall, within the jurisdiction of such corporation, exercise the same powers, perform the same duties, and be subject to the same penalties touching all process issued by the court or justices of such corporation, or by the clerk of such court, or otherwise lawfully directed to him, that the sheriff of a county exercises, performs, and is subject to in his county. 1 R. C. p. 285, ch. 79. 1848-9, p. 51, ch. 95.

§ 8. When there shall be no person acting as sergeant or deputy sergeant of any corporation, the mayor thereof, or in case of his death or absence, the recorder or senior alderman, may summon the members of the court of such corporation to meet at such time as he shall appoint; and if a majority of such members then attend, they may form a court and appoint a sergeant to supply the vacancy, take from him bond according to the preceding section, and administer to him the oaths of office. 1 R. C. p. 286, ch. 80.

§ 9. The clerk of the court by which any bond is taken of a sheriff or sergeant, shall, within sixty days after the same is taken, transmit a copy thereof to the first auditor. 1 R. C. p. 278, § 11, 13. 1819-20, p. 14, ch. 14. 1820-21, p. 30, ch. 29, § 5.

Of the appointment of coroners.

§ 10. Whenever in any county or corporation there may be no coroner, the court thereof shall nominate two persons residing therein, one of whom the governor may appoint to be coroner. If the court shall be of opinion that there ought to be an additional coroner, it may nominate two other persons residing in the county or corporation, one of whom the governor may appoint to the office. Every coroner may hold his office during good behaviour. 1 R. C. p. 286, 287, ch. 81, § 1, 3.

Of the appointment of constables, and their official bonds.

§ 11. The court of each county shall biennially in June, or so soon thereafter as may be, appoint constables of such county for two years, and assign them to particular districts, which shall not be altered during the two years, unless by a court composed of the same members who were present when they were laid off, or by a court composed of a majority of the acting justices of the county. 1 R. C. p. 300, ch. 84, § 1, 2. 1820-21, p. 33, ch. 32, § 4.

1 R. C. p. 300, ch. 84, § 1.
1840-41, p. 74, ch. 61, § 2.
1841-2, p. 139, ch. 197, § 72.

§ 12. In each incorporated town, the court of such corporation shall annually appoint one or more constables therefor.

1 R. C. p. 301, ch. 81, § 1.

§ 13. In case of a vacancy in the office of constable, the court of the county or corporation may make a new appointment to fill the vacancy.

Id.
1823-4, p. 27, ch. 22, § 2.

§ 14. Every court appointing a constable shall take from him bond in a penalty not less than two thousand, nor more than ten thousand dollars.

1841-2, p. 53, ch. 92, § 2.

§ 15. The court of any county or corporation may remove a constable thereof from office, and appoint another in his stead, after first summoning him to shew cause against such removal.

Of the appointment and powers of deputy sheriffs, sergeants and coroners; and of the right to remove them.

1 R. C. p. 279, § 15; p. 293, § 36.
1839-40, p. 141, ch. 182.
1841-2, p. 139, ch. 197, § 72.

§ 16. A sheriff, sergeant or coroner, may with the consent of the court of his county or corporation, appoint any person as his deputy of whom the court shall enter of record, that he is a man of honesty and good demeanor.

1 R. C. p. 203, 4, § 36, 37.
1839-40, p. 141, ch. 182, § 1, 2.
1841-2, p. 139, § 72.

§ 17. Such deputy may be removed from office, by his principal or by the court of his county or corporation. During his continuance in office he may discharge any of the official duties of his principal.

1 R. C. p. 231, § 23.
1844-5, p. 57, ch. 64.

§ 18. In case any sheriff or sergeant shall die during his term of office, his personal representative shall have the same right to remove any deputy from office and to appoint another, that the sheriff or sergeant himself, if alive, would have had; or any such deputy may be removed by order of the court of the county or corporation in which such sheriff or sergeant qualified; but unless so removed, the deputies of such sheriff or sergeant, in office at the time of his death, shall continue in office until the qualification of a new sheriff or sergeant, and execute the same in the name of the deceased, in like manner as if the sheriff or sergeant had continued alive until such qualification. And any default or misfeasance in office of any such deputy, shall be as much a breach of the condition of the bond of the sheriff or sergeant, and of the bond of such deputy, as if the sheriff or sergeant had continued alive and in the exercise of his office.

When sheriff or sergeant dies in office, power to appoint collector.

1 R. C. p. 281, § 24.
1821-2, p. 7, ch. 4, § 6.
1840-41, p. 25, § 89.

§ 19. Upon the death of a sheriff or sergeant, the court of the county or corporation may, during the term for which he was appointed, if it apprehend that the taxes, levies, militia fines or officers' fees will not otherwise be properly collected, cause his personal representative to be summoned to shew cause against the appointment of a collector of the taxes, levies, militia fines and officers' fees, (or any of them,) in the county or corporation; and if no sufficient cause be shewn

against it, may make such appointment, and, if the person so appointed die or be removed, appoint another. It shall take from every person so appointed collector, a bond in such penalty as it may deem sufficient, a copy whereof shall be transmitted by the clerk to the first auditor.

§ 20. Such collector shall have the same power to collect, and to appoint deputies to collect, the taxes, levies, militia fines or officers' fees, and distrain and sell therefor, and be charged with the same duties in respect thereto, that the sheriff or sergeant would have had or been charged with if he had continued alive until the end of the term. And the deputy collectors shall have the same powers and duties in relation thereto, and for the same length of time, that the deputies of the sheriff or sergeant would have had. And defaults and misfeasances of the deputy collectors, whether before or after the death of the collector, shall be as much a breach of the condition of the collector's bonds and of the bonds of such deputies, as defaults of the deputies of the sheriff or sergeant would have been a breach of the condition of the bond of the sheriff or sergeant, and of the bonds of such deputies.

¹ R. C. p. 281, § 24.
1821-2, p. 7, ch. 4, § 3, 4, 5, 6.
1840-41, p. 25, § 86, 87, 88, 89.

When coroner and constable may act in place of sheriff or sergeant.

§ 21. When there is no person acting in a county as sheriff or deputy sheriff thereof, or in a corporation as sergeant or deputy sergeant thereof, the coroner or coroners of such county or corporation shall perform all the duties pertaining to the office of sheriff or sergeant thereof, except such as relate to the collection of the taxes, levies, militia fines and officers' fees. And when for any cause it is unfit for a sheriff or sergeant to serve any process, or to summon a jury, such process shall be directed to and served by, and such jury shall be summoned by, a coroner of the county or corporation.

¹ R. C. p. 291, ch. 81, § 27; p. 293, § 33.

§ 22. Before any coroner shall, under the preceding section, receive any money or serve any execution, the court of his county or corporation shall take from him a bond in such penalty as it may deem sufficient.

Id. p. 287, § 6.
See ante, p. 88, ch. 13, § 8.

§ 23. Whatever process is, under the twenty-first section, to be directed to, or whatever act is under that section to be done by, a coroner, shall, in case that office be vacant or the coroner or coroners be interested or not authorized to act, be directed to, or done by, a constable of the county or corporation. And if any coroner or constable fail in the proper performance of any duty prescribed by that section, or by this, like redress may be had against such coroner or constable, his sureties and his or their heirs, devisees or personal representatives, as could have been had against a sheriff or sergeant, his sureties, and his or their heirs, devisees or personal representatives, if such sheriff or sergeant had been guilty of such failure.

¹ R. C. p. 292, § 30, 31; p. 293, § 33, 34, 35.
1823-4, p. 26, ch. 22, § 1, 2.

1823-4, p. 26,
ch. 22, § 9.
1832-3, p. 44, ch.
71.

1 R. C. p. 292, 3,
§ 31.

§ 24. But the court of any county or corporation, in the case provided for in the twenty-first section, may, instead of leaving the duties of sheriff or sergeant to be performed by a coroner or constable, appoint a crier for the superior and inferior courts of such county or corporation, who shall perform all the duties pertaining to the office of sheriff or sergeant therein, except such as relate to the collection of the taxes, levies, militia fines and officers' fees. And though persons be acting in any county as sheriff or deputy sheriff, or in any corporation as sergeant or deputy sergeant, yet when it is unfit from any cause for the sheriff or sergeant to serve any process, or to summon a jury, the court in which the case is pending may, instead of leaving these duties to be performed by a coroner or constable, appoint some other person to perform the same.

As to commanding power of county or disobeying the command.

1 R. C. p. 280, ch.
78, § 17.
1830-31, p. 115,
ch. 45, § 3.
1836-7, p. 55, ch.
80, § 3.
1840-41, p. 89, ch.
79, § 4.
1841-2, p. 65, ch.
109, § 2.
1843-4, p. 63, ch.
82, § 4.
1844-5, p. 63, ch.
76, § 2.

§ 25. Every officer to whom any order, warrant or process may be lawfully directed shall execute the same within his county or corporation, or upon any bay, river or creek adjoining thereto. He may, in case of resistance made or apprehended, summon so many of the people of his county or corporation, or require the commandant of any regiment therein to call out such portion of his regiment to aid him, as may be sufficient. If any person fail to obey such summons, or if any commandant fail to comply with such requisition, the officer shall report the fact to the court from which such order, warrant or process issued, which court may, in a summary way, after notice to such commandant or other person, adjudge him to be fined or imprisoned or both, as for a contempt of the court's authority. If the order, warrant or process shall not have issued from a court, such commandant or other person shall be punished as for a misdemeanor, and to that end the officer shall report him to each attorney for the commonwealth, prosecuting in any court having jurisdiction over the county or corporation in which such person was summoned.

Who are privileged from arrest under civil process; when it must not be executed.

1 R. C. p. 194, ch.
64, § 16; p. 254,
ch. 71, § 34.
Id. p. 265, ch. 75,
§ 7; p. 281, ch.
78, § 19.
Id. p. 518, ch. 131,
§ 7.
1830-31, p. 18, ch.
1, § 10.
1833-4, p. 36, ch.
22, § 41.
4 Call 97.

§ 26. The following persons shall be privileged from arrest under civil process, except for an escape, to wit: a judge, grand juror, or witness, required by lawful authority to attend any court or place, during such attendance and while going to and from such court or place; officers and men while going to, attending at, or returning from any muster or court martial; ministers of the gospel while engaged in performing religious services, in a place where a congregation is assembled, and while going to and returning from such place; and voters going to, attending at, or returning from an election. Such privilege

shall only be on the days of such attendance, and an additional day for every twenty miles necessarily travelled in going or returning. No civil process shall be served on Sunday, except in cases of persons escaping out of custody, or where it may be specially provided by law. See post. ch. 151, § 10.

Of the obligations to be taken by officers; and the return of process.

§ 27. No officer shall, by colour of his office, take any obligation of or for any person in his custody otherwise than is directed by law. If he does, the same shall be void. 1 R. C. p. 281, ch. 78, § 20.

§ 28. Every officer to whom any order, warrant or process may be lawfully directed, shall make true return thereon, of the day and manner of executing the same and subscribe his name to such return. Where the service is by a deputy, such deputy shall subscribe to the return his own name as well as that of his principal. With such order, warrant or process, there shall be returned any bond taken, and an account of any sales made under the same, specifying therein the several articles sold, the persons to whom sold, and the prices thereof. Such return shall be to the court from which such order, warrant or process emanates, or to which it is returnable, and in other cases not specially provided for, shall be to the court by which the officer was appointed, or in which he qualified. Where a sale is made under any such order, warrant or process, and no particular time for such return is prescribed therein or by statute, the return shall be made within thirty days after the sale. Any officer failing to comply with this section shall forfeit twenty dollars, and if he make a false return, shall forfeit therefor one hundred dollars. 1 R. C. p. 280, ch. 78, § 17. Id. p. 283, § 31; p. 543, ch. 134, § 50. 2 R. C. p. 56, § 31. 2 Wash. 54.

§ 29. A judgment in a prosecution for a failure to make such return, or to subscribe the same as aforesaid, shall be no bar to further proceedings if the failure be continued, but there shall be a further forfeiture of twenty dollars by the officer for each month, subsequent to the judgment, that the failure may continue, until it appear that the return cannot be made, or if it be the case of an execution or warrant of distress, until it appear that the amount thereof is paid to the party entitled. Moreover, the court to which, or to the clerk's office of which such return ought to be made, upon the motion of any party injured, may fine such officer, his sureties, and his and their personal representatives, or any deputy in default, a reasonable sum, and from time to time impose on him other reasonable fines, not exceeding altogether, in the case of an execution or warrant of distress, the rate of five dollars for every hundred dollars therein mentioned, for each month that the failure to make such return may have continued. Id. 1 R. C. p. 531, § 17; 541, 2, § 47. 2 R. C. p. 55, § 26, 28. 1820-21, p. 30, ch. 29, § 6; p. 34, ch. 34, § 1. 1830-31, p. 86, ch. 25. 3 Call. 44. 6 Munf. 557. 2 Leigh 560.

§ 30. Any sheriff or other officer may transmit by mail to the proper officer, with his return thereon, any order, warrant or process which came to his hands from beyond his county 1830-31, p. 68, ch. 11, § 74. 1832-3, p. 43, ch. 90.

or corporation, and proof that any order, warrant or process was put into the post office duly addressed to any officer, and that the postage thereon was paid, or where it is addressed to a clerk of a court, proof (in lieu of payment of postage) of an endorsement on the envelope of the parties' names, and the nature of the process, shall be *prima facie* evidence of the receipt thereof by the officer, (to whom the same is addressed,) by due course of mail, and this *prima facie* evidence may be furnished by the receipt taken, at the time the order, warrant or process is put into the post-office, from the postmaster, or his deputy, and the certificate of a justice of the acknowledgment of the receipt before him. But an officer may protect himself from a forfeiture or fine upon such proof, by making oath that he did not himself receive the order, warrant or process, so addressed to him, and that he verily believes it was not received by any of his deputies.

Of payment made to, and receipts given by, officers in certain cases.

1846-7, p. 65, ch.
73.

§ 31. Every officer shall receive, at par value, in payment of taxes, levies, militia fines or officers' fees, which he has to collect, any claim or allowance directed to be paid, by the court of his county out of the county levy, provided the person offering the same in payment be the party entitled thereto.

1 R. C. p. 280,
§ 16.
1845-6, p. 8, ch. 1,
§ 9.

§ 32. Every officer shall deliver to each person who pays him, or from whose property he makes taxes, levies, militia fines or officers' fees, a receipt for all that is so paid or made, with a statement shewing how much thereof is for taxes, how much for levies, how much for militia fines, and how much for officers' fees, and also the bills for such fees. Any officer failing herein shall forfeit to such person four dollars.

Of distraining or levying and selling.

1822-3, p. 31, ch.
21, § 5.
1842-3, p. 50, ch.
74, § 5.

§ 33. No growing crop, of any kind, (not severed,) shall be liable to distress or levy, except indian corn, which may be taken at any time after the fifteenth day of October in any year.*

1836-7, p. 46, ch.
69, § 1.

§ 34. In the case of a husband or parent, there shall be exempt from such distress or levy the following articles, or so much, or so many, thereof as the party may have: one cow, one bedstead with a bed and necessary bedding for the same, six chairs, one table, six knives, six forks, six plates, two dishes, two basins, one pot, one oven, six pieces of wood or earthenware, one loom and its appurtenances, one spin-

* The revisors proposed, (p. 787 of their reports,) "that wheat or corn, which though not severed, is in a proper state to be gathered, may be distrained or levied upon." In lieu of that, the legislature adopted this section; following the act of 1842-3.

ning-wheel, one pair of cards and one axe, five barrels of corn, five bushels of wheat or one barrel of flour, two hundred pounds of bacon or pork, and five dollars in value of forage or hay.

§ 35. Slaves shall not be distrained or levied upon, without the debtor's consent, when there are other goods and chattels of such debtor sufficient for the purpose, which are shewn to the officer, and which it is in his power to take; and the officer shall in no case make an unreasonable distress or levy.

§ 36. For slaves, horses, or any live stock distrained or levied upon, the officer shall provide sufficient sustenance while they remain in his possession. Nothing distrained or levied upon shall be removed by him out of his county or corporation, unless where it is otherwise specially provided.

§ 37. In any case of goods or chattels which an officer shall distrain or levy upon, otherwise than under an attachment, or which he may be directed to sell by an order of a court, judge or justice, (unless such order prescribe a different course,) he shall fix upon a time and place for the sale thereof, and publish notice of the same at least ten days before the day of sale, at the door of the courthouse of his county or corporation, on a court day, and at some place near the residence of the owner, if he reside in the county or corporation. The officer shall, at the time and place so appointed, sell to the highest bidder for cash, the said goods and chattels, or so much thereof as may be necessary.

§ 38. If such goods and chattels be slaves, mules, work-oxen, or horses, they shall be sold at the courthouse of the county or corporation, between the hours of ten in the morning and four in the afternoon. The sale shall be on the first day of the term of the court thereof next succeeding that at which they may be advertised, except where the parties shall, at or before the time for advertising the same, in writing, authorize the officer to dispense with the provisions of this section, in which case the sale shall be according to the preceding section, and except also that sales of property taken within the town of *Lynchburg*, shall be made in front of the market-house in the said town.

§ 39. When there is not time, on the day appointed for any such sale, to complete the same, the sale may be adjourned from day to day until it shall be completed.

Of judgments on certain motions against officers and their deputies.

§ 40. If any officer or his deputy, shall make such return upon any order, warrant or process, as entitles any person to recover money from such officer by action, the court to which, or to the clerk's office of which, such return is made, may, on a motion on behalf of such person, give judgment against such officer and his sureties, and against his and their per-

2 R. C. p. 56,
§ 29.

1 Call 51.
2 Munf. 280,
2 Raud. 323,
9 Leigh 297.

1 R. C. p. 283,
ch. 78, § 30, 32,
33, 34; p. 294,
ch. 81, § 37.
2 R. C. p. 56,
§ 31.
1839-40, p. 142,
ch. 182, § 2.

1 Wash. 72;
1 Call. 51, 538;
3 Munf. 401.

2 Leigh, 393, 560,
8 " 218.
10 " 581.
4 Grattan, 160.

1 R. C. p. 283,
§ 23.

sonal representatives, for so much principal and interest as would at the time such return ought to have been made, be recoverable by such action, with interest thereon, at the rate of fifteen per centum per annum from that time until payment. Where such return is by a deputy, there may also be a like motion and judgment against such deputy and his sureties, and against his and their personal representatives.

§ 41. Where any deputy of a sheriff, sergeant, coroner or collector shall commit any default, or misconduct in office, for which his principal, or the personal representative of such principal is liable, or for which a judgment or decree shall be recovered against either, such principal, or his personal representative, may, on motion, obtain a judgment against such deputy and his sureties, and their personal representatives, for the full amount for which such principal or his personal representative may be so liable, or for which such judgment or decree may have been rendered. But no judgment shall be rendered by virtue of this section, for money for which any other judgment or decree has been previously rendered, against such deputy or his sureties or their personal representatives.

§ 42. When any judgment or decree shall be obtained against a sheriff, sergeant, coroner, or collector, or his sureties, or their personal representatives, for or on account of the default, or misconduct of any such deputy, and shall be paid in whole or in part by any defendant therein, he, or his personal representative, may, on motion, obtain a judgment or decree against such deputy and his sureties, and their personal representatives, for the amount so paid, with interest thereon from the time of such payment, and five per centum damages on said amount.

§ 43. Any motion under either of the two preceding sections, may be made in the court of the county or corporation, or in the circuit court of the county or corporation, in which the default or misconduct of the deputy occurred, or was committed.

CHAPTER L.

OF COURTHOUSES, CLERKS' OFFICES, JAILS AND JAILORS.

SEC.

1. Courthouse, clerk's office and jail to be provided by courts and kept in good order. Justices to be summoned or majority present.
2. Clerk's office to be fire-proof; how jail to be constructed and kept in repair.
3. Apartments of jail to be white-washed, &c.; what to be furnished

SEC.

- prisoners, and how the sick attended to. Ardent spirits prohibited.
4. Circuit court to have jail inspected.
5. Circuit court to fine jailor for failure of duty.
6. Who to be keepers of the several jails.

SEC.

7. The jailor of each court to attend its sessions; whom he is to receive into his jail.
8. When he may receive slaves.
9. When a court may adopt as its jail that of another county.
10. When two justices may designate jail in which a prisoner is to be confined.
11. Keeper of such adopted jail to be jailor as to prisoners so confined therein, of the court or officer by whose order it is adopted.
12. In what jail *United States* prisoners to be received.

SEC.

13. How jailor paid for support of *United States* prisoners.
14. How jailor paid for support of persons confined under civil process.
15. When payment therefor to be made to jailor. How the same may be recovered by him.
16. Creditor paying fees of jailor, may, on motion, recover same from person confined.
17. How prisoner turned over by jailor to his successor.

Of courthouses, clerks' offices and jails; how jail is to be kept and prisoners treated.

§ 1. There shall be provided by the court of every county, and by the council of each town wherein there is a corporation court, a courthouse, clerk's office and jail, the cost whereof and of the land on which they may be, and of keeping the same in good order, shall be chargeable to the county or corporation, and may be levied for by such court or council. The fee simple of the land shall be in the county or corporation, and the court thereof may purchase so much land as, with what it may before have had, will make two acres, whereof what may be necessary shall be occupied with the courthouse, clerk's office and jail, and the residue planted with trees and kept as a place for the people of the county to meet and confer together. But no county court shall make any order for the purchase or condemnation of such land, or the erection of such buildings, unless a majority of the acting justices of such county be present at the time, or unless the acting justices of such county shall have been summoned to attend at that time to consider the subject, under an order made at a previous term.

§ 2. Every such clerk's office shall be fire proof. Every such jail shall be well secured, and sufficient for the convenient accommodation of those who may be confined therein, so that convicts and slaves not convicts, may be in apartments separate from each other and from the other prisoners. Each apartment shall be so constructed that it can be kept comfortable. The jail shall be kept in good repair.

§ 3. The jailor shall cause all the apartments of his jail to be well whitewashed, at least twice in every year, and have the same properly aired and always kept clean. He shall furnish every prisoner with wholesome and sufficient food, and with a bed and bedding cleanly and sufficient, and have his apartment warmed when it is proper. In case of the sickness of any prisoner, he shall provide for him adequate nursing and attendance, and if there be occasion for it, and circumstances will admit, shall confine him in an apart-

1 R. C. p. 250, ch. 71, § 16; p. 261, ch. 72; p. 274, ch. 77, § 5. 1833-4, p. 71, ch. 51.

Id. 1822-3, p. 32, ch. 30, § 6, 8.

1 R. C. p. 235, ch. 69, § 34. 1822-3, p. 33, 4, ch. 30, § 7, 10.

ment separate from other prisoners. In no case shall a jailor permit the intemperate use of ardent spirits in his jail.

1 R. C. p. 236, ch.
69, § 36, 7.
1822-3, p. 33, ch.
30, § 7, 8.

§ 4. The circuit court for every county and corporation shall, at its first term after the commencement of this act, and annually thereafter, appoint three persons, one of whom shall be a physician, to inspect the jails within such county or corporation. The judge shall administer to them the following oath: *You shall truly report to the court as to the (or each,) jail in this county (or corporation,) the size thereof, the number of its apartments, and its state and condition, whether it is in all respects such as is required by the second section of the fiftieth chapter of the Code, and if not, in what it is deficient. You shall also diligently examine and truly report whether or no the jailor has, during the last twelve months, faithfully performed the duties required of him by the third section of the said chapter, and if he has not, in what respect he has failed to perform the same.* The said inspectors shall be furnished for their guide with a copy of the said oath, and of the said second and third sections. If they make a report which fails in any respect to conform to said oath, it shall be recommitted to them until they fully report upon all the said matters.

Id.

§ 5. If it appear to the circuit court, by such report or other evidence, that the jailor has in any respect failed to perform his duties, the said court may in a summary way, after summoning him to shew cause against it, fine him not exceeding thirty dollars.

Whom a jailor is to receive, and how he is to be paid for those confined under civil process.

1 R. C. p. 223, ch.
67, § 19; p. 235,
ch. 69, § 32, 33;
p. 251, ch. 71,
§ 17.
1822-3, p. 18, ch.
18, § 3.
1831-2, p. 43, ch.
53.
1832-3, p. 40, ch.
61, § 8.

§ 6. The sheriff of every county and the sergeant of every corporation shall be keeper of the jail thereof; except only that the jail in the city of *Williamsburg* may be used as the jail, and the sergeant of the said city be the jailor, of the county of *James City* as well as of the said city of *Williamsburg*; and that the jail and jailor of the county of *Frederick* shall also be the jail and jailor of the corporation of *Winchester*; and the jail and jailor of the county of *Augusta* shall be the jail and jailor of the corporation of *Staunton*. And the jail of any county or corporation shall be the jail of the circuit court thereof, as as well as of the county or corporation court, except as follows: The jail of the corporation of *Petersburg* shall be the jail of the circuit court for the county of *Prince George*, and that of the corporation of *Fredericksburg* may be used as a jail for the circuit court of the county of *Spottsylvania*. The jail of any county, in which the general court or court of appeals may sit, may be used as a jail for either of the said courts.

1. R. C. p. 223,
§ 19; p. 235, § 33.

§ 7. The jailor of every court shall attend it during its sessions, be amenable to its authority and obey its orders. He

shall receive into his jail all persons committed by the order of such court, or of a judge or justice thereof, or under process issuing therefrom, and all persons committed by any lawful authority. 1822-3, p. 18, ch. 18, § 3. 1831-2, p. 43, ch. 53.

§ 8. No jailor shall receive into his jail any slave except slaves distrained or levied upon under lawful process, and such as may be committed by warrant of a justice or other public authority. Under such warrant a slave may be confined in jail, at the request of the master, so long as the justice and the jailor concur in opinion that no public inconvenience will result from it, but no longer. 1822-3, p. 34, ch. 30, § 11. 1823-4, p. 38, ch. 35, § 4. 1846-7, p. 66, ch. 74. 8 Leigh 442.

§ 9. When a county or corporation is without a sufficient jail, or its jail is to be removed, rebuilt, or repaired, the court thereof may adopt as its jail the jail of another county or corporation, until it can obtain a sufficient jail by building or repairing. And persons committed or to be committed to the jail of the first mentioned county or corporation, at or after such adoption, and before a sufficient jail be so obtained, shall be conveyed to the jail so adopted. 1835-6, p. 46, ch. 69, § 1. 1836-7, p. 41, ch. 66. 1829, p. 46, ch. 75.

§ 10. In the recess of the county or corporation court, and before a jail is adopted under the preceding section, any two justices may, by warrant, direct any person committed or to be committed to the jail of such county or corporation, to be conveyed by the officer in whose custody he may be, to some other jail to be designated in the warrant. Id.

§ 11. The keeper of any jail so adopted or designated shall, as to the persons so conveyed thereto, be the jailor of the court before which they are to be examined or tried, or by which, or by a judge, justice, or officer whereof, the order was made or process issued under which they are committed, until the court of the county or corporation first mentioned in the two preceding sections, shall declare its own proper jail to be sufficient, when the said persons shall be delivered to the sheriff of such county or sergeant of such corporation, who shall convey them to his jail. Id.

§ 12. The jailor of any county or corporation shall receive into his jail any person committed thereto under the authority of the *United States*, and keep him safely according to the warrant or precept of commitment, until he shall be discharged under the laws of the *United States*. But no person arrested on civil process shall, under this section, be committed to any other jail than that of the county or corporation within which such person may reside or be found. 1 R. C. p. 633, ch. 173.

§ 13. The jailor shall, for the support of any such prisoner, be paid by the *United States*, or the creditor at whose suit he is in custody, and for a failure of duty as to any such prisoner shall be liable to the *United States*, or such creditor, in like manner as, in the case of a prisoner committed under the authority of the state, he would be paid by or be liable to the state or a creditor. Id.

1 R. C. p. 540, 1,
ch. 134, § 42, 3, 5,
1822-3, p. 31, 2,
ch. 30, § 1, 2.

§ 14. The party at whose instance any person may be confined in jail under civil process, or if he be confined in more than one case, the party at whose instance he was first taken, shall be responsible to the jailor for the fees chargeable on account of such confinement.

Id. § 3.

§ 15. Payment shall be made at the end of every thirty days of such confinement, of the fees so chargeable. If such payment be not made, the jailor may, on motion to the court of any county or corporation for which he is jailor, after notice to said party, his personal representative, attorney or agent, obtain judgment against said party or his personal representative, for the amount of said fees, with interest thereon from the time payment ought to have been made. Upon the execution on such judgment, the clerk shall endorse that *no security is to be taken*. And if on an execution returnable in not less than thirty days, the officer to whom the same may be directed shall return that he cannot make the amount thereof, the jailor may discharge the person so confined.

Id. § 4.

§ 16. Any party by whom payment may be made, of the fees so chargeable to him, may upon motion to the court of such county or corporation, obtain judgment against the person who was so confined, or his personal representative, for the amount so paid, with interest thereon from the time of such payment.

How prisoners are turned over by a jailor to his successor.

1 R. C. p. 282,
ch. 78, § 26.

§ 17. An indenture between a jailor quitting office and his successor, or an entry upon record in the court of the county or corporation, setting forth the names of the several prisoners turned over, at the time of the former's quitting office, to his successor, with the causes of their commitment, shall be sufficient to discharge the former from all suits for any escape that shall happen afterwards.

CHAPTER LI.

OF THE POOR.

Number of overseers; appointment; term of office, &c.

SEC.

1. *In a town*.—Number of overseers, compensation, &c. to be prescribed by council thereof.
2. *In a county*.—Court thereof to lay it off into districts and prescribe number of overseers.
3. Time and place of election of overseers; how notice thereof given.

SEC.

4. Who may vote therein.
5. If no election is made, fact to be reported. If there be an election, persons elected to be notified. Their term of office.
6. County court to appoint in case there be no election, and fill vacancies happening.
7. } Penalty on overseer or superintendent failing to serve, and on
8. } clerk, sheriff, &c. for failure of duty.

SEC.

9. If overseer do not take oath of office, another appointed.

Meetings of board of overseers.

10. Time and place of meeting of the board of overseers.
 11. How meeting adjourned or called; president and clerk appointed.
 12. Journal of proceedings, &c. Penalty on overseers or clerk failing to attend a meeting.

What poor provided for; where and how.

13. Proceedings on application for relief.
 14. If overseer refuse relief, court may direct it.
 15. Person likely to be chargeable may be removed to county or town where he has legal settlement.
 16. The overseers thereof to provide for him, and the expenses of his removal, &c. How such expenses may be recovered.
 17. Overseers of county, a corporation; may purchase and sell lands, or cultivate them for the use of the poor.
 18. Poor-houses and other buildings to be provided. Managers, &c. to be employed, and overseers to prescribe regulations.
 19. Overseers to prevent persons from going about begging.
 20. Poor may be assisted either at poor-house or elsewhere.

Agents for overseers; how agents and overseers account, and are compensated.

21. Overseers may appoint agent. He shall give bond.

SEC.

22. Agent's duty.
 23. Overseer and agent to account and pay balances in their hands.
 24. How such balances may be recovered.
 25. Office of agents, &c. at pleasure of the board; their compensation to be prescribed by county court or town council. Compensation of overseers.

Annual report of overseers.

26. When report of overseers shall be made, and of what.
 27. Form of report, and when and how sent to second auditor.
 28. Penalty if report be not made and transmitted. Duty of second auditor in respect thereto.
 29. From reports made, second auditor to report to general assembly. His report to be printed; how distributed.

Expenses of the poor.

30. How sum necessary for support of the poor levied in a county, and to whom paid. In a town, to be provided by town council.

Exception as to certain counties.

31. This chapter not to apply to certain counties, or repeal certain laws.

Disposition of forfeitures, and construction of certain words.

32. Forfeitures to be to the use of the county or town.
 33. The words "overseer" and "overseers" construed.

Number of overseers of the poor; mode of appointing them; term of service, and penalty for not serving.

§ 1. In any town, the council thereof may prescribe the number of overseers of such town, their term of office and compensation, and the time and manner of appointing them. 2 R. C. p. 272, ch. 239, § 30.
1831-2, p. 269, ch. 199.
1832-3, p. 52, ch. 81, § 4.

§ 2. The court of each county shall lay off into districts so much of the county as is without the limits of a town that provides for its poor, and may alter such districts, and prescribe for each one or more overseers. 2 R. C. p. 264, ch. 239, § 1, 4, 5; p. 276, § 40.
1839, p. 138, ch. 188.
1848-9, p. 55, ch. 103.

§ 3. An order for the election of overseers shall be made by the court of every county, within the last three months of the term for which the overseers thereof may have been last elected or appointed, or as soon as may be after the end of that term. The court shall, in such order, fix the day for the election, and a place within each district for holding the same, 2 R. C. id.

and shall also appoint for each place a person to superintend the election. The clerk shall immediately post a copy of such order at the front door of the courthouse, and within ten days, deliver another copy thereof to the sheriff, for every such superintendent. The sheriff shall, within ten days after receiving the same, deliver to each superintendent the copy for him. And the copy so received by any superintendent, shall be posted at the place of election in his district.

2 R. C. p. 264, ch. 239, § 1; p. 276, § 40.

§ 4. At an election for any such district, every person may vote who is a freeholder or housekeeper therein, and any person shall be eligible who resides and has a freehold therein, unless he is, or within six months preceding the election has been, a collector of county levies.

Id. § 1, 2, 5.

§ 5. If not so many as ten votes be given in a district, no election shall be considered as made for such district, and the superintendent shall report the fact to the court at the next term. If an election be made, the superintendent shall return the names of the persons elected to the clerk of the county court, who shall thereupon issue a writ to the sheriff, commanding him immediately to inform every person so elected of the fact of such election. The sheriff shall, within ten days after receiving such writ, execute the same, and return it to the court at the succeeding term. The term of office of every person so elected, shall be three years from the first day of April in the year wherein the order may have been made for such election.

Id. § 1, 3, 4, 5.

§ 6. The county court shall appoint for the same term as many of the overseers prescribed for a district as shall not have been so elected; and when a vacancy happens in the office of overseer, the county court shall fill such vacancy.

Id. § 1.

§ 7. Any person appointed a superintendent of any such election, who shall fail to serve, and any superintendent, clerk or sheriff, who shall fail to perform any duty prescribed by any preceding section, shall, unless a reasonable excuse be shewn therefor, forfeit thirty dollars.

Id. § 2, 5, 30.

§ 8. Any person elected or appointed overseer, who shall fail to serve, shall forfeit one hundred dollars, unless he be a person who, in the course of the next preceding nine years, shall have served three, or paid the amount of such forfeiture, or unless he be unable to serve from age or infirmity.

Id. § 3.
1832-3, p. 52, ch. 81.

§ 9. If any person so elected or appointed overseer shall not take the oaths of office within one month after he is informed of such election or appointment, the vacancy may be filled under the sixth section, and a proceeding may be had for the forfeiture prescribed by the preceding section.

Meetings of the board of overseers.

2 R. C. p. 266, § 6.
1827-8, p. 31, ch. 29.

§ 10. The court of the county and the council of the town shall, from time to time, fix upon a day and place for an annual meeting of the overseers. The said overseers shall

meet at the said day and place, and may meet at such other times and places as they may fix upon.

§ 11. If at the time fixed for any meeting a majority fail to attend, those present may adjourn to another day. The overseers shall appoint a president and a clerk. A meeting of the board may be called at any time by the president or one-third of the overseers, upon giving to the others reasonable notice of the time for such meeting. If at any meeting the president of the board be absent, a president *pro tempore* may be appointed. 1 R. C. p. 81, ch. 32. 2 R. C. p. 266, § 6.

§ 12. All the proceedings and accounts of the overseers shall be entered in a book, and the said proceedings shall be signed by the person presiding at the meeting at which they may have taken place. If the clerk or any overseer shall, without sufficient excuse, fail to attend any meeting of the board, he shall forfeit two dollars. Id. p. 271, § 25, 27.

What poor are provided for; where and how.

§ 13. On application by, or on behalf of, any person unable to maintain himself, or by or on behalf of the family of a person, when he is unable to maintain it, and the family is unable to maintain itself, such person or family shall be provided for or assisted, if he or they have a legal settlement in a town which has overseers, by one of the said overseers, and if he or they have a legal settlement not within such town, by a majority of the overseers of the district wherein such settlement may be. But a person shall not be deemed to have a legal settlement in such town until he shall have resided therein for one year, nor in a county until he shall have resided therein and without such town for one year; and shall not be deemed to have a legal settlement in either, if he has migrated into this state within three years, unless at the time of so migrating he was able to maintain himself. Id. p. 266, § 7; p. 267, § 11; p. 275, § 37; p. 277, § 43.

§ 14. When on such application an overseer refuses either provision or assistance, the court of the county or corporation may direct the same. Id. p. 266, § 8.

§ 15. On the complaint of an overseer for any county or town, before a justice thereof, that any person is come into such county or town, who is likely to be chargeable thereto, such justice may, by warrant, cause such person to be removed to the county or town wherein he was last legally settled, unless he be so sick or disabled that he cannot be removed without danger of life, in which case he shall be provided for at the charge, in the first instance, of the county or town wherein he is, and, after his recovery, shall be removed. Id. p. 267, § 9; p. 275, § 37.

§ 16. The overseers of the county or town wherein such person was last legally settled, shall, upon his being so removed thereto, provide for him and repay all the charges incurred for his maintenance, cure and removal. If he die before removal, they shall repay the charges for his burial

and those incurred during his sickness. In case of their failure to comply with this section, complaint may be made before the circuit court of the county or corporation in which they reside, and a summons may be awarded against them; upon the return of which executed on them, or one of them, the circuit court may order them to provide for him and order repayment of the charges aforesaid, and compel obedience to any such order by attachment or otherwise.

1819-20, p. 78, 9, ch. 90; p. 79, ch. 91. § 17. The overseers of each county shall be a corporation by the name of the overseers of the poor of such county, and with the assent of the court thereof, may purchase lands for the use of the poor, and sell and convey lands. They may provide on any of their lands stock and instruments of husbandry, and use such lands as a place of general reception for the poor.

1797-8, p. 26, ch. 41. § 18. The council of a town or overseers of a county may provide a poorhouse, workhouse and other buildings and improvements; employ managers, physicians, nurses and servants; and prescribe regulations for the government of the several overseers, and discipline for the said houses and the persons therein.

2 R. C. p. 276, § 42. § 19. Every overseer shall exert himself to prevent any person from going about begging or staying in any street or other place to beg. Every such person shall immediately be taken up and conveyed to the place of general reception for the poor of the county or town in which he may be found, or if he has a legal settlement in another county or town of this state, he may be proceeded against according to the fifteenth section. Or where he has migrated from another state and has no legal settlement in this, the board of overseers may cause him to be removed to such other state. To carry into effect this section, an overseer may issue a warrant to a constable.

Id. p. 266, § 7. 1832-3, p. 52, ch. 81. § 20. Any person to be provided for or assisted by an overseer or overseers, may either be kept at the place of general reception, or be supported or assisted elsewhere, as he or they may deem best; conforming always to such regulations as may, under the eighteenth section, be prescribed. All persons kept at the place of general reception who are able to work shall be made to do so.

Of agents for overseers; how agents and overseers account and are compensated.

2 R. C. p. 277, § 45, 6. § 21. The overseers of any county may appoint an agent, who, before acting as such, shall execute a bond to the said overseers in such penalty and with such sureties as the board may deem sufficient, conditioned for the faithful performance of his agency.

Id. and § 44. § 22. Such agent shall keep for the board such money and property as it may authorize him to receive or have the care

of, and dispose of the same as it may direct. He shall, in the corporate name of the overseers, recover money or property for them, and defend proceedings against them; the board allowing the expenses of such prosecution or defence.

§ 23. Annually in April, and more frequently, if required, every agent and overseer shall render to the board a correct account of his transactions, with proper vouchers, and pay, according to its order, such balance as may be in his hands. Any agent or overseer failing so to do, shall forfeit not less than thirty nor more than one hundred dollars. 2 R. C. p. 271, § 29; p. 277, § 46.

§ 24. The overseers of any county or the council of any town may move for and obtain judgment in the court thereof, or in the circuit court of such county or town, or of the county wherein such town may be, against any overseer or his representatives, or against any agent or other person and his sureties, and his and their personal representatives, for such balance as may be in the hands of, or be owing from, such overseer, agent or other person, with lawful interest thereon, and for damages in addition thereto not exceeding fifteen per centum. Id. p. 268, § 13; p. 270, § 22, 3; p. 277, § 46.

§ 25. Every officer or other person appointed or employed by the board of overseers shall hold his office or employment at its pleasure, and receive for his services such compensation as the court of the county or council of the town may deem reasonable. Each overseer shall receive one dollar for every day's attendance on the board. Id. p. 268, § 13; p. 271, § 25, 27; p. 277, § 46. 1 R. C. p. 81, ch. 32. 1828-9, p. 23, ch. 17, § 6.

Annual report of overseers.

§ 26. A report from the overseers of every county and town for the year ending on the thirty-first day of March, shall be made by those in office on that day. The report shall set forth the number provided for in that year, shewing how many were white and how many coloured, for what length of time, and where each was provided for or assisted, the name of each, the amount received by the overseers for the year, shewing how much from the annual levy, and how much otherwise, the amount expended by them for the year, shewing how much was expended at the place of general reception, and how much for those supported or assisted elsewhere, the balance remaining in the hands or under the control of the overseers, what amount in addition they will require to pay arrears of the past and meet expenditures for the ensuing year, and what will be the nature of the said expenditures. It shall state whether any, and if any, which were kept at work at the place of general reception, for what length of time and in what manner, whether in the workhouse or in tilling the land or otherwise, and may contain such remarks upon the operation of the poor-laws as the overseers may deem pertinent. 2 R. C. p. 266, § 6, 7; p. 268, § 13; p. 271, § 29; p. 278, § 47. 1828-9, p. 22, ch. 17, § 1, 2, 3.

§ 27. The second auditor may prescribe the form for such Id.

report. It shall be made in that form, if one be so prescribed; otherwise, in such form as the board may deem best. The president shall attend particularly to the preparation of the report, which shall be delivered to the court of the county on the first day of its May term, and to the council of the town at its first meeting after the first of May. Within sixty days thereafter, a copy shall be transmitted by the clerk of the court or council to the second auditor.

1828-9, p. 22, ch.
17, § 1, 2, 3.
1845-6, p. 61, ch.
79.
1828-9, p. 23,
ch. 17, § 4.

§ 28. In case such report be not so delivered, the president of the board shall forfeit fifty dollars; and in case such report be not so transmitted, the clerk shall forfeit thirty dollars. The second auditor shall immediately give information of such failure to the proper attorney for the commonwealth, that he may proceed either against the clerk or against the president.

1828-9, p. 23, ch.
17, § 5.

§ 29. From the copies so delivered to the second auditor, he shall make a report to the general assembly, which, with so much of the matter contained in the reports of the overseers as may seem to him advisable, shall be printed under his supervision. A sufficient number of copies shall be printed to furnish one to each member of the general assembly, the president and each director of the literary fund, to every overseer, to the general library, the university and each college within the state; and the governor shall cause the copies so printed to be distributed accordingly.

As to expenses of the poor.

2 R. C. p. 269,
§ 17.

See post, ch. 53,
§ 3, 4.

§ 30. In every county the amount which, according to their report, the overseers thereof will require, shall be chargeable on such county; and the county court, when it orders the annual levy, shall provide for the said amount. It shall be payable out of the proceeds of the said levy, to the overseers of the county, and shall be paid thereout to such persons and in such sums as the board of overseers may direct. In every town which has overseers, the expense of the poor shall be provided for by the town council.

Exception as to certain counties.

1813-14, p. 117,
ch. 56.
1816-17, p. 147,
ch. 79.

13 Hen. Stat. 280,
ch. 40.
2 R. C. p. 279,
§ 51.
1809-10, p. 91,
ch. 97.
1826-7, p. 95, ch.
89.

§ 31. This chapter shall not apply to the county of *Gloucester*, which shall be governed by the act of the twenty-fifth of January eighteen hundred and fourteen. Neither shall it prevent the overseers for the county of *James City* from continuing the poorhouse and school established under the act of the third of February eighteen hundred and seventeen, for the education as well as the maintenance of the poor in that county. Nor shall it repeal or alter the act passed the twelfth of December seventeen hundred and ninety-one, concerning the poor of the parish of *Suffolk*, in the county of *Nansemond*; or the act passed the third of February eighteen hundred and

nineteen, to authorize the overseers of the county of *Essex* to receive a certain legacy ; or the act passed the sixteenth of February eighteen hundred and twenty-seven, concerning the overseers of the upper parish of *Nansemond* county, except in this respect : that the money which by the three last mentioned acts is authorized to be levied for by the overseers therein mentioned, shall, upon a report from the said overseers, be levied for by the court of their county.

Disposition of forfeitures and construction of certain words.

§ 32. Every forfeiture declared by this chapter shall, when incurred in a town whereof there are overseers, be to such town ; and when incurred without such town, be to the overseers of the county.

§ 33. In this chapter, the word "overseer," or the word "overseers," shall be construed as if followed immediately by the words "of the poor."

CHAPTER LII.

OF COUNTY ROADS, CAUSEWAYS AND BRIDGES ; ALSO OF LANDINGS AND WHARVES.

SEC.	SEC.
1. } How commissioners are appointed	18. When application refused, what costs applicant to pay.
2. } and their term of office.	19. How a road or landing discontinued. Proceedings therefor.
3. None but residents and freeholders to be appointed. Justices incapable.	20. Proceedings on application to erect gates.
4. County court may direct commissioners to examine roads or routes for roads.	21. Proceedings on complaint of such gates.
5. Width of roads.	22. Duty of owner of dam across which a road passes: width of such road. Fixtures to be kept thereon. Penalty for failure.
6. } When road to be opened or landing established, persons to view the ground and report.	23. Where roads divided into precincts, and surveyors appointed.
7. }	24. When surveyor may resign and how long exempt.
8. } Proceedings upon the report when without writ of <i>ad quod damnum</i> .	25. General duty of surveyor as to roads and bridges.
9. }	26. Who to work on roads, who exempt.
10. How writ of <i>ad quod damnum</i> is issued and executed.	27. When extra labour may be required.
11. Proceedings upon the inquisition.	28. Duty of those appointed to work on roads and penalty for failure.
12. Sheriff may postpone inquisition or adjourn it.	} When surveyor may hire labour and purchase certain things ; account thereof and of money received and expended by him. Balance unexpended, how applied.
13. Action of court on return of inquisition.	
14. Only one acre of land to be condemned, for a landing. Road or landing in a town.	
15. Expenses of road chargeable to county.	29. }
16. When proprietor or tenant to pay costs of writ.	30. }
17. Compensation to commissioners and surveyor.	

SEC.		SEC.	
31.	Vehicles and implements hired or purchased, when; how to be paid for.	42.	In certain cases, contract for labour or for building and repairing bridges and roads not allowed unless justices recommend and a certain number concur.
32.	When materials for repair of roads, &c., may be taken from land.	43.	How and when money payable under a contract is levied.
33.	How owner compensated for such materials.	44.	Annual report of commissioners of roads to be made to county court: at what time and what it shall set forth
34.	Compensation of surveyor. Penalty for failure of duty.	45.	Bridge not to be used as a wharf. Penalty for doing so.
35.	When contract may be made to build a bridge or causeway.	46.	Any person may erect wharf, &c. on his land. How the same may be abated if injurious.
36.	Proceeding when a road is necessary from one county into another; where courts of both concur.	47.	How privilege may be obtained of erecting a wharf on a county landing.
37.	Where either court fails to do what is required on its part.	48.	Certain acts as to county of Rockbridge not repealed, and jurisdiction of towns preserved in certain cases.
38.	Court may authorize commissioners to contract for keeping a road therein in order.		
39.	Proceedings of commissioners so authorized.		
40.	} Proposals received by them returned to court, and proceedings thereon.		
41.			

Commissioners of roads; their appointment and term of office.

1834-5, p. 68, ch.
77, § 27.
1838, p. 91, ch.
127, § 1, 2.

§ 1. In any county in which at the time there may be no commissioners of roads, the court thereof, after the justices shall have been summoned to consider the subject under an order made at a previous term, may determine upon having such commissioners. The order containing such determination may afterwards be rescinded or altered by the court, after the justices shall have been summoned as before, a majority being present and concurring.

1834-5, p. 56, ch.
77, § 1.

§ 2. In every county in which there may now be commissioners of roads, or in which it may be so determined to have them, the court thereof shall annually, during its May term, or as soon thereafter as may be, appoint so many persons to be such commissioners as it may deem expedient. Their term of office shall be until the next May term of such court. If a vacancy happen in the office, the court shall fill it.

Id.
1840-41, p. 107,
ch. 96, § 1.

§ 3. No person shall be capable of receiving such appointment unless he be a resident and freeholder of the county. And a person shall be incapable of being so appointed, who at the time is a justice.

As to examination by commissioners of roads or routes for roads; how wide roads must be.

1823-9, p. 95, ch.
97, § 6.
1836-7, p. 80, ch.
87, § 1.
1842-3, p. 81, ch.
112, § 16.

§ 4. The county court may direct one or more of the said commissioners to examine such of the roads existing in the county, or such routes for new roads therein as it may designate, and report upon the expediency of altering the location or grade of any existing road or of establishing any new road, or of building or repairing any bridge; or may direct him

or them to lay off any road at such grade as it may prescribe.

§ 5. Every road shall be thirty feet wide unless the county court order it to be less. When a majority of the acting justices is present, the county court may order a road adjoining a town or village to be made therefrom wider, for a distance not exceeding eight hundred and fifty yards. In such case the width shall not exceed sixty feet.

2 R. C. p. 235, ch. 236, § 7.
1834-5, p. 60, § 8.
1839-40, p. 59, ch. 73, § 2.
1842-3, p. 80, ch. 112, § 13.

Proceeding when a person applies to have a road opened or altered, or a landing established.

§ 6. When any person applies to the court of a county to have a road or landing therein established or altered, the court shall, and whenever without such application it sees cause for so doing, the court may, direct one or more of its commissioners of roads, or appoint three or more viewers, to view the ground and report to the court the conveniences and inconveniences that will result, as well to individuals as the public, if such road or landing shall be as proposed, and especially whether any yard, garden, orchard or any part thereof, will in such case have to be taken.

2 R. C. p. 233, ch. 236, § 1; p. 238, § 14; p. 239, § 18.
1834-5, p. 67, 8, ch. 77, § 23, 24; p. 57, § 2.
1842-3, p. 77, ch. 112, § 4.
1839-40, p. 59, ch. 73, § 2.
2 R. C. p. 237, § 10.
1841-2, p. 68, ch. 116.
1839-40, p. 59, ch. 73, § 2.
3 Leigh, 675.
5 Leigh, 611.

§ 7. The commissioner acting either under the preceding or the fourth section, shall particularly report the facts and circumstances, in his opinion, useful in enabling the court to determine the expediency of establishing or altering the road or landing. He may examine other routes than that proposed for any road, and report in favour of the one he prefers, with his reasons for the preference. He shall report the names of the land-owners on such route, and state which of them require compensation, the probable amount thereof, and any other matter which he may deem pertinent. A map or diagram of such route shall be returned with his report. If the commissioner be not surveyor, he shall procure one if necessary.

1828-9, p. 95, ch. 97, § 6.
1842-3, p. 77, ch. 112, § 4.

§ 8. Upon the report, unless the opinion of the court be against establishing or altering the road or landing, it shall award process to summon the proprietors and tenants of the lands on which it will be if established, to shew cause against the same. The summons shall be executed on such of them as are in the county, and on any agent therein of any proprietor not within the same.

2 R. C. p. 233, ch. 236, § 2; p. 238, § 15.
1834-5, p. 57, ch. 77, § 3, 23.
1838-9, p. 95, ch. 97, § 7.
1842-3, p. 77, ch. 112, § 5.

§ 9. Upon the return of the said process so executed, if the court has enough before it to enable it to fix upon a just compensation to the proprietors and tenants, and they are willing to accept what it deems just, it may determine the matter without a writ of *ad quod damnum*.

1836-7, p. 89, ch. 87, § 2; p. 135, ch. 142, § 1.
4 Call 374.

§ 10. But the writ shall be awarded if desired by any proprietor or tenant, or if the court see cause for awarding the same. Such writ shall command the sheriff to summon and impanel a jury of twelve freeholders of the vicinage, not re-

2 R. C. p. 233, ch. 236, § 2; p. 238, § 15.
1834-5, p. 57, ch. 77, § 3, 23.

1836-7, p. 81, § 2;
p. 136, ch. 142,
§ 1.
1842-3, p. 78, ch.
112, § 5.

lated to either party, to meet on the lands of such proprietors or tenants as may be named in the order and writ, at a certain place and day therein also specified, of which notice shall be given by the sheriff to such proprietors and tenants. Such notice shall be served like the previous process, except only that it need not be given to one present at the time of making the order.

2 R. C. p. 234, ch.
236, § 2; p. 238,
§ 15.
1833-4, p. 97, ch.
79.
1834-5, p. 58, ch.
77, § 3, 23.
1842-3, p. 78, ch.
112, § 5, 6.
1842-3, p. 78, ch.
112, § 6.

§ 11. The jury, after being duly sworn by the sheriff, shall view the lands of the proprietors and tenants so named, and ascertain what will be a just compensation to each proprietor and tenant so named for the land of his proposed to be taken, and for the damage to the residue of his tract beyond the peculiar benefits which will be derived in respect to such residue from the road or landing. And in the case of a road the jury, if it be desired by any party interested, or be directed by the court, shall also ascertain whether the road will be one of such mere private convenience as to make it proper that it should be opened and kept in order by the person or persons for whose convenience it is desired, and whether a less sum, and if so what sum, will be a just compensation to any such proprietor or tenant, in case he be permitted to erect and keep one or more gates across the road.

2 R. C. p. 234, § 2;
p. 239, § 15.
1834-5, p. 58, § 3,
23.
1842-3, p. 78,
§ 5, 6.

§ 12. If the jury shall not be sworn on the day specified, or if they cannot agree upon their inquest (in which case they may be discharged) the sheriff shall execute the writ on such other day as he may from time to time appoint; notice thereof being given to the parties interested. If the inquest cannot be completed in one day, the sheriff shall adjourn the jury from day to day until its completion. When completed, it shall be signed by the jurors and returned by the sheriff, together with the writ.

Id.
1832-3, p. 54, ch.
86.
1836-7, p. 81, § 2;
p. 136, § 1.

§ 13. After the return thereof, the court shall, upon the report, inquest and other evidence, if any, determine whether the road or landing shall be established or altered as proposed, whether the road is to be opened and kept in order by the person for whose convenience it is desired, and whether any proprietor or tenant shall be permitted to erect one or more gates across the road.

8 Leigh 454.

2 R. C. p. 234,
§ 2; p. 239, § 14,
15.
1834-5, p. 58, § 3,
23.
1842-3, p. 78, § 5.

§ 14. Not more than one acre of land shall be condemned for any landing. And no road or landing shall be established upon or through any lot in an incorporated town without the consent of the proprietor thereof.

Of the charges upon any such proceeding; how they are paid.

Id.
1836-7, p. 81, § 2;
p. 136, § 1.
3 Leigh 821.

§ 15. When the road or landing is established or altered, the county shall be chargeable with the compensation to the proprietors or tenants, with such costs as the court may allow the applicant, and the costs of the inquest, except in the case mentioned in the next section.

1836-7, Id.

§ 16. Where the record shews that the sum allowed by the jury as compensation to any proprietor or tenant is not more than the court, before awarding the writ of *ad quod damnum*

had consented to allow him, such proprietor or tenant shall be adjudged to pay the costs occasioned by such writ.

§ 17. A statement, in writing, of the number of days each commissioner and every surveyor was employed in executing any such order, shall be sworn to, and presented to the court, and the court may allow to each a reasonable compensation, not exceeding two dollars per day for each commissioner, and two dollars and fifty cents per day for the surveyor, to be paid by the county. 1834-5, p. 57, ch. 77, § 2.

§ 18. When the court decides against the application of an individual to establish or alter a road or landing, he shall pay the costs incurred in the case, except the compensation of the commissioner and surveyor, and except such costs as may be payable by any proprietor or tenant under the sixteenth section, and the court may enforce payment thereof. 2 R. C. p. 234, ch. 236, § 2; p. 239, § 15. 1834-5, p. 58, § 3; p. 67, § 23. 1836-7, p. 81, § 2; p. 136, ch. 142, § 1.

As to discontinuing a road or landing.

§ 19. When any road is altered, it shall be discontinued to the extent of such alteration and no farther. Any person may apply to have a county road or landing discontinued, after publishing notice of the intended application on the first day of a term of the county court, at the door of the courthouse of the county, and at two public places in the neighbourhood. The county court at the next term after that at which notice may have been so published, shall appoint three or more viewers, or direct one or more of the commissioners of roads, to view such road or landing, and report in writing whether in their or his opinion any, and if any, what inconvenience would result from discontinuing the same. Upon the said report and other evidence, if any, the county court may discontinue such road or landing; taking care in every case of an established post road, not to discontinue the same until another has been substituted. 2 R. C. p. 234, § 3; p. 239, § 17. 1834-5, p. 58, ch. 77, § 4, 23. 1842-3, p. 78, ch. 112, § 7.

Erection or discontinuance of gates across roads.

§ 20. Application may be made to the court of a county to permit gates to be erected across any road therein. On such application, the court shall order all the acting justices of the county to be summoned to meet at the next term, and consider the subject. A copy of the order shall forthwith be posted at the door of the courthouse, and at some public place near where the gates are proposed to be erected. At the next term, if all of the said acting justices shall have been duly summoned, or a majority thereof be present, and if it appear that a copy of the order has been duly posted, the court may permit such erection. But gates erected shall be discontinued whenever the county court shall so direct, by an order made when a majority of the acting justices of the county is present, 2 R. C. p. 240, § 21. 1833-4, p. 97, ch. 80, § 1, 2. 1834-5, p. 66, § 19. 1838, p. 91, ch. 128. 3 Leigh 675.

or after the acting justices have been summoned to consider the subject.

2 R. C. p. 240,
§ 21.

§ 21. If it be suggested by any citizen of this state to the circuit court of the county in which any such gate may be, that injury or inconvenience results therefrom, the circuit court shall cause the owner of any such gate to be summoned to appear at the next term, and shew why the same should not be discontinued, and, upon the return of such process executed, shall determine whether there ought to be such discontinuance or not. If the court adjudge that there ought, the surveyor of the precinct, or if there be none, the sheriff of the county, shall abate such gate at such time as the court may order.

Duties of the owner of a dam across which a road passes.

2 R. C. p. 238,
§ 12.
1834-5, p. 67, ch.
77, § 21.
1836-7, p. 81, § 4.

§ 22. The owner or occupier of every dam shall, so far as a road passes over the same, keep such dam in good order, at least twelve feet wide at the top, and also keep in good order a bridge of like width over the pier-head, flood-gates or any waste cut through or round the dam; and shall erect and keep in good order a strong railing on both sides of such bridge or dam, unless such railing be dispensed with by the county court. If he fail to comply with this section, he shall pay a fine, for every twenty-four hours' failure, of two dollars. But the fine shall not in any one prosecution exceed fifty dollars; and where a mill-dam is carried away or destroyed, the owner or occupier thereof shall not be thenceforth subject to such fine, until one month after the mill shall have been put into operation.

Division of roads into precincts; and surveyors thereof.

2 R. C. p. 234, 5,
§ 4, 6.
1834-5, p. 58,
§ 5, 6.
9 Leigh 657.

§ 23. The court of each county shall divide into precincts all the county roads not kept in order under any contract, and as often as it pleases may appoint a surveyor for each precinct, who shall hold his office until another be appointed in his stead. The clerk of the court shall, upon such appointment, issue a writ to the sheriff commanding him to give information thereof to the person so appointed, which writ the sheriff shall execute and return to the court at the succeeding term. The clerk shall moreover, annually, at his March court, publish at the door of the courthouse a list of the precincts and of the names of the surveyors. Any clerk or sheriff failing in such duty, shall forfeit therefor five dollars.

1834-5, p. 58,
§ 5, 6.
1842-3, p. 80, ch.
112, § 11.

§ 24. Any person after being surveyor for two years may give up his office, if his road be in good order, and shall not within two years thereafter be appointed surveyor without his consent.

2 R. C. p. 234,
§ 4, 7.
1834-5, p. 58,

§ 25. Every such surveyor shall superintend the roads in his precinct. He shall cause the same to be kept cleared,

smoothed of rocks and obstructions, of necessary width, well drained, and otherwise in good order and secure from the falling of dead timber therein. He shall cause to be placed and kept at the fork or crossing of every road a sign-board, on which shall be stated in plain letters the most noted place to which each road leads; and across every stream where it is necessary and practicable, a sufficient bridge, bench or log for the accommodation of foot passengers. When any more important bridge or causeway is necessary, and it is practicable for him to have it made, he shall cause it to be made twelve feet broad at the least, and safe and convenient. Every bridge or causeway in his precinct shall be kept by him in as good order as the means in his power will permit.

§ 5, 8.
1842-3, p. 80, § 13.
1844-5, p. 66, ch. 83.
5 Grat. 241.

Who to work on roads, and penalty for failure.

§ 26. All male persons in each county shall be appointed by the court thereof, and compelled to work, on some public road therein, with the following exceptions, viz: persons under sixteen and above sixty years of age; persons who reside in a town that provides for its poor and keeps its streets in order; the officers of the penitentiary, or any lunatic or other state asylum; the servants or slaves employed therein; the persons necessarily employed at any ferry; those employed on any state road or any turnpike, canal or railroad; and the officers of any literary institution, and ministers of the gospel. A list or designation* of the persons appointed to work on any road shall be endorsed on the writ issued under the 23d section, and a copy thereof shall be delivered by the sheriff to the surveyor.

2 R. C. p. 235, § 5; p. 260, § 21.
1827-8, p. 10, ch. 10, § 1.
1828-9, p. 44, ch. 67, § 1.
1834-5, p. 59, § 7.
1839, p. 15, ch. 17, § 4.
1842-3, p. 80, ch. 10, § 10.
1846-7, p. 16, ch. 15, § 5.

§ 27. When the court of any county deems it proper, for the purpose of opening a new road, or repairing great damages casually occurring to an existing one, it may appoint to work thereon, persons appointed to work on other roads, provided not more than ten days of extra labour within one year be required of any person under this section.

1834-5, p. 59, § 7.

§ 28. Every person appointed under either of the two preceding sections shall either in person or by a sufficient substitute, when required by the proper surveyor, attend with proper tools, and work the road on such days as the surveyor may direct. For every day on which there may be a failure, seventy-five cents shall be paid to the surveyor within twenty days thereafter, by the person in default, if a person of full age, or if he be an infant, by his parent or guardian; or if he

2 R. C. p. 235, § 5.
1834-5, p. 59, § 7.
1842-3, p. 79, ch. 112, § 9, 10.

* The words "*or designation*" were in the amendment of the committee on revision as printed, (p. 75 of amendments,) but were omitted in the engrossed bill reported to the house, and the roll is like that bill. In consequence of the act of 1846-7, p. 16, ch. 15, § 5, the revisors suggested (p. 789 of their reports,) that the section which they had before reported should be so amended as to provide for persons employed in the university and military school; the words, "*and the officers of any literary institution,*" were probably adopted in consequence; though not in the committee's amendment as printed, they are in the engrossed bill and in the roll.

be a servant or slave, by his overseer, if he be under one, otherwise by his master. If the money be not paid, it shall be recoverable by the surveyor with costs before a justice. Any money received by a surveyor under this section, after the payment of costs, shall be applied to the improvement of the road of which he is surveyor.

Of things obtained by surveyor; how expenses incurred by him are allowed; of his accounts and compensation; and penalty on him for failure of duty.

2 R. C. p. 235, 6,
§ 7, 8.
1828-9, p. 93, ch.
97, § 8.
1834-5, p. 60, § 8,
9; p. 63, § 3.
1836-7, p. 136, ch.
142, § 2, 6.
1838, p. 91, § 2;
p. 92, ch. 129.
1842-3, p. 80, ch.
112, § 15.
1845-6, p. 76, ch.
109, § 2.

§ 29. The court of any county may authorize the surveyor of any road therein to hire so many labourers as, with those allotted to work thereon, will suffice to keep it in good order, to purchase gunpowder for the removal of obstructions therein, and to purchase tools or implements, which shall be preserved and transferred from one surveyor to another as the court may direct. The surveyor shall return to the court a particular account on oath of the expenses so incurred, and also the expenses of placing and keeping up sign-boards as before mentioned; and the court shall allow the same, or so much thereof as may be justly due, in the next county levy.

1836-7, p. 138, ch.
142, § 6.
1842-3, p. 80, ch.
112, § 12, 15.

§ 30. The surveyor shall keep an exact account of all money received by him by virtue of his office, and of the manner of expending it. Annually, at the May or June term of the county court, he shall render to the court such an account, verified on oath. If any part of the money so received shall then remain unexpended, he shall thereafter apply the same to the use of roads or bridges in the county, as the court may direct.

1834-5, p. 61, § 8.
1842-3, p. 80,
§ 13.

§ 31. Whenever it may be necessary to have the assistance of wheel carriages or ploughs, for making or repairing any road or bridge or causeway therein, the surveyor of such road may obtain, by consent of the owner, or if he cannot so obtain, may, by warrant of a justice, impress such necessary carriages, ploughs, draught horses or oxen, with their gear and driver, belonging to any persons appointed to work on the road, and shall appoint two honest housekeepers, who, upon oath, shall value, by the day, the use of such carriages and other property. The valuation so made, with a certificate from the surveyor of the number of days the said property was used on the road, shall entitle the owner to an allowance for the same in the next county levy.

2 R. C. p. 235,
§ 7, 8.
1834-5, p. 60, § 8.
1842-3, p. 80, § 13.

§ 32. The surveyor of any road may take from any convenient lands so much wood, stone, gravel or earth, as may be necessary, to be used in constructing or repairing such road or any bridge or causeway therein; and may, for the purpose of draining the road, cause a ditch to be cut through any lands adjoining the same, provided such wood and other articles be not taken from, and such ditch be not cut through any lot in a town, without the consent of the owner.

§ 33. If the owner or tenant of any such lands shall think himself injured thereby, a justice, upon application to him, shall issue a warrant to three freeholders, requiring them to view the said lands and ascertain what is a just compensation to such owner or tenant for the damage to him, by reason of anything done under the preceding section. The said freeholders, after being sworn, shall accordingly ascertain such compensation, and report the same to the county court, and an allowance shall be made therefor in the next county levy.

2 R. C. p. 235,
§ 7, 8.
1834-5, p. 60, § 8.
1842-3, p. 80,
§ 13.

§ 34. Every surveyor of a road shall be entitled to compensation at the discretion of the county court, to be paid out of the county levy, not exceeding one dollar and fifty cents per day for the time actually employed in superintending the work on the road; which time shall be stated in writing and sworn to. Any surveyor of a road who shall fail to perform any duty required of him in this chapter, shall pay a fine of not less than five nor more than thirty dollars.

2 R. C. p. 235-6,
§ 7, 8.
1828-9, p. 45, ch.
69.
1834-5, p. 60, § 7,
8, 9; p. 65,
§ 17.
1842-3, p. 81,
§ 15.

Of contracts for bridges or roads in a county or between two counties.

§ 35. When a bridge or causeway is necessary, and it is not practicable for the surveyor to have it built or repaired, the county court may contract therefor; and to this end may direct one or more of the commissioners of roads, if such there be, or appoint some other commissioners, to receive proposals.

2 R. C. p. 236, § 9.
1834-5, p. 61, § 10.
1842-3, p. 81, § 16.

§ 36. The court of one county may notify the court of another that a road is necessary from the line of the former to a place in the latter, or that a bridge or causeway is necessary over a place between the two counties. If the court to which such notification is sent concur in this opinion, it shall in the former case proceed in like manner as when a person applies to have a road established; and in the latter it shall appoint three commissioners to meet at such place between the two counties on a certain day, and agree with commissioners of the other court as to the manner and conditions of doing the work. Upon this order being communicated to the former court, it shall make a similar appointment. The persons so appointed shall, after such conference, report the result thereof to the courts by which they are respectively appointed. Upon such report being made, each of the courts shall direct the same or any other commissioners, not exceeding three for each court, to unite with commissioners of the other court in receiving proposals for doing the work in such manner and on such conditions as may have been agreed on by the commissioners, or in any other manner, or upon any other conditions, that may be concurred in by the two courts.

2 R. C. p. 237,
§ 10.
1834-5, p. 62, § 11.

§ 37. If the court to which such notification is sent, shall fail to appoint viewers or commissioners, or if either court shall fail in any respect to do on its part what should be done towards the work, the remedy by *mandamus* shall lie before the circuit court of the county whose justices are complained of, on behalf of the court of the other county. And the circuit

1a.

5 Call 248, 556,

court shall compel the justices complained of to do what ought to be done in the matter.

1834-5, p. 63, § 13.
1836-7, p. 136, ch.
142, § 2, 4.

§ 38. The court of any county may direct one or more of the commissioners of roads, or appoint some other commissioners, to receive proposals for making, improving or keeping in order the whole or any part of any road therein; such keeping in order to be for such length of time as the court may prescribe.

Id.

§ 39. The commissioners to receive proposals for any work shall publish notice in a newspaper for four weeks, or at the front door of the courthouse on a court day, that proposals for such work will be received in writing on the first day of the next court, or on such subsequent day as may be mentioned in the notice. The notice shall describe the work to be done, and require such specifications to be made in the proposals as the commissioners may determine on.

Id.

§ 40. The proposals which may be received shall all be returned to the court or courts as the case may be, which shall determine whether any, and if any, which of the said proposals shall be accepted, and, if the proposals of any person be accepted, shall direct the commissioners, or one of them, to reduce to writing a contract between the county or counties and such person.

2 R. C. p. 236, 7,
§ 9.
1834-5, p. 63, § 10,
13.
1836-7, p. 137,
§ 4, 5.

§ 41. The commissioners shall report to the court every such contract signed by the person with whom it is made. And after an order shall be made by the court or courts ratifying such contract, the same shall be binding upon the contractor and the county or counties so soon as the contractor gives bond with sufficient sureties to be approved by the court, and in a penalty at least double the amount which he is to receive under the contract, payable to the county or counties, with condition for the faithful performance of such contract. Such bond shall be taken by the commissioners and returned to the court. If approved by the court, the fact shall be entered of record, and the bond and contract shall remain filed in the clerk's office. The court may direct one or more of the commissioners of roads, or appoint some other person or persons, to superintend the work contracted for, and may make such allowance therefor as it may deem reasonable, which shall be chargeable on the county.

1840-1, p. 107, ch.
96, § 2.

2 R. C. p. 237,
§ 9.
1834-5, p. 63, § 10,
13.
1839-40, p. 59, ch.
73, § 1.
1841-2, p. 67, ch.
114, § 1, 2.

§ 42. No county court shall, for the building or repairing of any bridge or causeway, or for the making, improving or keeping in order any road or part of it, order any contract which stipulates for the payment by the county of an amount exceeding two hundred dollars, or order labourers to be hired, unless all the acting justices of such county shall have been previously summoned for that purpose, nor unless at least one-fourth of the whole number of acting justices of the county concur in such order. And no person appointed a commissioner under the order for such contract shall become an undertaker for the work either directly or indirectly.

§ 43. The money which the contractor may be entitled to receive under any such contract shall be so levied for as to be paid at the times at which by the contract the same is to be paid. When the contract is with two counties, the levy therefor shall be by the justices of the two in proportion to the taxes in each on the subjects mentioned in the thirty-fifth chapter, according to the last assessment next before such contract. 2 R. C. 236, 7, § 9.
1834-5, p. 63, § 10,
13.
Ante, p. 177, ch.
35.

Annual report of commissioners of roads.

§ 44. In every county in which there may be commissioners of roads, they shall annually make a report to the county court on the first day of its May term, unless the same shall have been dispensed with by an order of such court. The report shall set forth the number of days' labour performed during the past year in each precinct by the surveyor and his hands, the amount of money expended during the same year upon the roads, bridges and causeways, and the course which the commissioners deem it most advisable should be pursued in relation thereto during the ensuing year. It shall also specify such improvements as they think ought to be made in the said roads, bridges and causeways, and the order in which the work had best be done, the probable cost of such improvements, and the labour or money that would probably suffice in each precinct to keep in good order the roads as established, without such improvements. 1836-7, p. 136, ch.
142, § 3.

Bridge not to be used as a wharf.

§ 45. No person shall use any county bridge as a wharf from which to load or unload any vessel or boat, nor as a place of deposit for any property. Nor shall the master or owner of any vessel make fast the same to, or lay the same alongside, such bridge. Any person violating this section shall pay a fine of not less than five nor more than twenty dollars, which fine shall be to the county in which the offence was committed. 1841-2, p. 67, ch.
113.

How wharf, pier or bulkhead may be erected.

§ 46. Any person owning land upon a water course may erect a wharf on the same, or a pier or bulkhead in such water course opposite his land, so that the navigation be not obstructed thereby, and so that such wharf, pier or bulkhead shall not otherwise injure the private rights of any person. But the court of the county in which such wharf, pier or bulkhead shall be, after causing ten days' notice to be given to the owner thereof of its intention to consider the subject, if it be satisfied that such wharf, pier or bulkhead obstructs the navigation of the water course, or so encroaches on any public landing as to prevent the free use thereof, may abate the same. 1839-40, p. 58, ch.
71, § 2, 3.

1839-40, p. 57, ch.
71, § 1.
1844-5, p. 66, ch.
82.

§ 47. Any person desiring the privilege of erecting a wharf at or on any county landing, may, after giving notice of his intention by advertising such notice at some public place near the landing, and also at the front door of the courthouse of such county on the first day of a term of the court of said county, present to the court at its next term a petition for such privilege, and the court shall order all the acting justices of the county to be summoned to attend at the following term to consider the same; when, if two-thirds of the justices present concur, the court may grant such privilege, and fix such rates and charges, upon such conditions and limitations, as it may see fit. But the court, at any subsequent term, after causing all the acting justices of the county to be summoned, and ten days' notice to be given to the owner, may, if two-thirds of the justices present concur, revoke such privilege, or alter such conditions or limitations, or regulate the rates and charges. This section shall not be construed to authorize a county court to grant the privilege of erecting a wharf within a town which has a corporation court.

Exception as to particular counties and as to certain roads in towns.

1828-9, p. 96, ch.
97, § 9.
1832-3, p. 84, ch.
115.
1836-7, p. 135, ch.
142.
1839, p. 179, ch.
244.
1841-2, p. 119, ch.
187.

§ 48. Nothing contained in this code shall be construed to take from the jurisdiction or charge of the trustees, court or other authority of any town, so much of any road as by the laws now in force is under such jurisdiction or charge, or to repeal or alter the act passed on the 18th of January 1837, to provide for opening and keeping in repair the public roads in the county of *Rockbridge*, or any subsequent acts amendatory thereof.

CHAPTER LIII.

OF COUNTY LEVIES.

SEC.

1. On how much of county, levy is ordered by county court.
2. Who subject to levies. Who exempt.
3. When and how sum to be levied for, ascertained.
4. How subjects of levy prescribed by a special order.
5. *Supersedes* to an order for a levy, how and when.
6. To whom clerk to deliver copy of order. Commissioner's duty thereon.
7. Sheriff's duty to collect the levies. How levy may be corrected.

SEC.

8. Certain sections of 36th chapter applicable to county levies.
9. Sheriff to return list of delinquents.
10. How sheriff credited for such list.
11. Clerk to send list of delinquent land to auditor.
12. Levies a lien on land.
13. First auditor to keep record thereof. How such levies may be paid into treasury. Sections of chapter 37 applicable to this.
14. Levies received into treasury to be paid to county.

SEC.

15. Sums due individuals out of levy, when paid. How they may be recovered.
16. When and how sheriff to settle with county, and balance due from him recovered.

SEC.

17. Forfeitures under this chapter go to the county.
18. Certain statutes not repealed. Concerning levy on dogs.

When and how levy is ordered.

§ 1. So much of every county as is without the limits of a town that provides for its poor and keeps its streets in order, shall be levied upon by the court of such county to raise the money with which the county is chargeable.

§ 2. The male persons above the age of sixteen years and the female slaves above that age that may be in any county without such limits, shall be subject to the levies for such county, except such slaves and other persons as the court may exempt from taxes and levies because of age, infirmity or a charitable reason.

§ 3. Annually in May or June, or as soon thereafter as may be, the court of each county, when a majority of the acting justices of the county is present, or when the justices shall have been summoned to attend to act upon the matter, shall make up in its minutes an account of all sums lawfully chargeable on the county which ought to be paid within one year, stating for what, how much and to whom such payment is to be made, and after taking into view whatever balance may appear due from the sheriff or collector, and all other sums due to the county which can be collected within one year, shall order a levy of so much as is necessary to be raised, and direct every sum so chargeable to be paid out of the balance due from the sheriff or collector, or out of the other sums due to the county, or out of the levy as the court may deem best. The levy shall be for a certain sum upon each of the slaves and persons* mentioned in the second section, unless a levy be ordered under the following section.

§ 4. After an order shall have been made by the court of any county at one term, for the justices to meet at the next term and consider the expediency of levying upon lands and other property, if at such next term a majority of the acting justices be actually present and concur therein, the court may order the levy on free male persons over the age of sixteen years, and on all slaves, land, and other property assessed with state tax within the county and without the limits of a town that provides for its poor and keeps its streets in order, and on the interest and profits mentioned in the fifty-second, the yearly income in the fifty-third, and the fees in the fifty-fourth section of the thirty-fifth chapter,† on which taxes are assessed against persons residing in the said county and with-

* Formerly the levy for the public as well as for the county was by the poll. See ante, p. 177, note to title 12.

† The sections referred to are on pages 186, 187.

out the limits of such town. The order of levy, under this section, shall be for a certain sum on each free male person over the age of sixteen years, and on other subjects, including slaves, for a certain *per centum* upon the amount of taxes thereon.

Supersedeas to an order for a levy.

2 R. C. p. 64, 5,
ch. 191, § 9, 10.

3 Leigh 813.

§ 5. To an order for a levy a writ of *supersedeas* may be allowed within forty days thereafter, on the petition of twenty-four persons interested in reversing the said order, although none of them may have been a party to the proceedings in the county court at the time of such order. Without waiting the final decision on such writ, the county court may rescind such order and order a levy according to law; or if the appellate court shall, on the *supersedeas*, be of opinion that the order is contrary to law and reverse the same, the county court may in like manner order a levy according to law. If money be collected under any such order which is afterwards rescinded or reversed, the sheriff or collector shall forthwith repay such money to the person from whom it was collected. If he fail so to do, a motion may be made and judgment obtained in like manner as in the cases provided for in the fifteenth section.

Duty of clerk, sheriff and commissioner of revenue in respect to levy.

2 R. C. p. 63, § 7,
p. 65, § 13.
1823-4, p. 67, ch.
54, § 2.
1825-6, p. 30, ch.
28, § 2.
1835-6, p. 240, ch.
167, § 2.

§ 6. Within three days after any order for a levy, the clerk shall deliver to the sheriff or other collector of the state taxes, a copy of the said order for himself, and, unless the same be dispensed with by the court, another copy for each commissioner of the revenue in his county; to whom the same shall be delivered by the sheriff within three days after receiving it. The commissioner, unless the same be dispensed with by the court, shall immediately, in the copies of his land book and book of personal property, extend in a separate column what may be due from each person by virtue of the levy; and for this additional labour shall receive such compensation as the county court may deem reasonable, which shall be chargeable on the county. If any clerk, sheriff or commissioner fail to perform the duty hereby prescribed, without reasonable excuse therefor, he shall forfeit not less than thirty nor more than one hundred dollars.

1 R. C. p. 231,
§ 22.
2 R. C. p. 64, § 7,
11.
1819-20, p. 23, ch.
26, § 4.
1820-21, p. 28, ch.
29, § 3.
1825-6, p. 31, ch.
28, § 2, 3.
1828-9, p. 94, ch.
97, § 3, 4.

§ 7. The sheriff of every county shall collect what is to be paid under any order for a levy, made by the court of his county. If any person think that he has been or is required by any officer to pay more than is proper under such order, he may, within one year from the date thereof, apply to the county court for relief; and thereupon the court shall order that he be exonerated from the payment of so much as is

improperly required, if not already paid, and if paid, that it be refunded to him. 1834-5, p. 146, ch. 131, § 4, 5; p. 62, ch. 77, § 12. 1840-41, p. 23, § 77, 80. 1842-3, p. 12, ch. 4, § 1. 2.

§ 8. Of the thirty-sixth chapter, the fourth, fifth, sixth, seventh, eighth, ninth, tenth, eleventh, twelfth, thirteenth, fourteenth, fifteenth and twentieth sections shall be applicable to county levies as well as state taxes in like manner as if enacted with the insertion after the word taxes, wherever it occurs therein, of the words "or county levies," and with the insertion after the words "the tax," in the fourteenth and fifteenth sections, of the words "or levy." Id. See ante, p. 195 to 198.

As to sheriff's return of levies not collected; and the sale of real estate delinquent.

§ 9. The sheriff or other collector, after using due diligence to collect the county levies, shall make out a list of such as cannot be collected, with the names of the persons chargeable therewith placed in the list alphabetically, and at the foot of such list shall subscribe the following oath: *I, A. B., sheriff (or deputy sheriff,) of the county of _____, do swear that the foregoing list is, I verily believe, correct and just; that I have received no part of the county levies mentioned in the said list; and that I have used due diligence to find property within my county liable to distress for the said levies, but have found none.* 1825-6, p. 31, ch. 28, § 3. 1828-9, p. 94, ch. 97, § 4. 1834-5, p. 38, ch. 56.

§ 10. A copy of such list shall, after the said oath is taken, be posted at the front door of the courthouse of such county on a court day, during the term next preceding that at which the list may be presented to the county court. The list shall be presented not earlier than the first day of the October, nor later than the first day of the May, term next after the order for the levy. When the list is presented, after a copy has been so posted, the county court, if a majority of the acting justices be present, or if the justices have been summoned to attend at that term to act upon the matter, shall examine it, and allow a credit to the officer for such levies as in its opinion could not have been collected with due diligence; the list of levies so credited shall be preserved in the clerk's office, and none of them shall thereafter be received by the officer without the authority of the court. 2 R. C. p. 63, § 6. 1825-6, p. 31, ch. 28, § 3. 1828-9, p. 94, ch. 97, § 4.

§ 11. Within one month after the said list is allowed, the clerk shall transmit to the first auditor a statement of the real estate appearing thereby to be delinquent, shewing the amount of the delinquency on each tract or lot. If he fail so to do, he shall forfeit thirty dollars. 1828-9, p. 44, ch. 68, § 1.

§ 12. Upon all real estate on which county levies may have been ordered before the commencement of this code, and which has been or may be returned to the first auditor as delinquent for such levies, under the laws in force at the time such levies were ordered, there shall be a lien for the said levies according to such laws. And upon all real estate which shall be delinquent for county levies ordered under this chapter, there shall be a lien for such levies, and interest

thereon at the rate of six *per centum* per annum from the fifteenth day of December in the year in which the same may have been ordered until payment thereof.

Ante, p. 200, ch.
37, § 2, et seq.

§ 13. The first auditor shall keep a record of all real estate upon which there is a lien for levies, as well as of real estate upon which there is a lien for taxes, and, upon his certificate, such levies and the interest thereon, may be paid into the treasury as well as the taxes and interest. The second section of the thirty-seventh chapter, and all subsequent sections thereof, shall be as applicable to real estate delinquent for levies as they would be if here enacted with the insertion therein of the words "and levies" immediately after the word taxes, except where it first occurs in the second section, and except in the caption of the fourth column of the memorandum mentioned in the seventh, and of the list mentioned in the ninth section; and in the said memorandum and list there shall be a fifth column with the caption "amount of levies due."

1828-9, p. 45, ch.
68, § 2.

§ 14. All moneys received into the public treasury on account of such levies, and the interest thereon, shall be considered as due to the county which ordered such levies, and shall be paid according to the order of the county court. But the commonwealth shall have a lien for the taxes and interest, paramount to that of the county for the levies and interest.

How sheriff is to account for and pay levies collected; and remedy against him.

2 R. C. p. 63, 4, 5,
§ 7, 8, 10.
1820-21, p. 28, ch.
29, § 3.
1821-4, p. 67, ch.
51, § 2.
1825-6, p. 31, ch.
24, § 3.
1828-9, p. 95, ch.
97, § 4.
1834-5, p. 62, ch.
77, § 12; p. 146,
ch. 131, § 4.

2 H. & M. 48.

§ 15. Every sum whereof payment shall have been directed out of the levy, shall be paid to the person to whom such payment is so directed, by the sheriff or collector, within six months after the date of such order. If any such sum be not so paid, judgment may be obtained on motion, in the circuit or county court of the county in which such order was made, by such person or his personal representative against the sheriff or collector, his sureties and his and their personal representatives, for such sum with lawful interest thereon, from the time the same ought to have been paid, and such damages in addition thereto, not exceeding fifteen *per centum*, as the court may deem proper. But no judgment shall be given under this section, after a judgment for the same sum is obtained by the county under the following section.

Id.

2 Leigh 580.

§ 16. Whenever required by the court after six months from the date of an order for a levy, or (if not so required before,) on the first day of the May term after such order, the sheriff or collector shall settle with the county court his account of the levies. If the account be not so settled, the court shall make an order to summon him, his sureties and his and their personal representatives, to attend and make such settlement at the next term; and if the summons be

executed on them or any of them, shall at the return day thereof proceed to settle the account. It shall be settled by deducting the amount for which credit may have been allowed under the tenth section, a commission of five per centum on the residue, and every sum whereof payment shall have been directed out of the levy which he shall appear to have actually paid, or for which judgment may have been given, or a motion be pending under the preceding section. Whatever balance may then appear due shall be paid as the court may direct. If it be not so paid, a judgment may be obtained on motion in the circuit or county court of the county, in the name of the county, against the sheriff or collector, his sureties and his and their personal representatives, for the said balance, with lawful interest thereon from the time of such settlement, and such damages in addition thereto, not exceeding fifteen *per centum*, as the court may deem proper.

As to forfeitures under this chapter; and certain local statutes.

§ 17. Every fine or forfeiture under this chapter, unless it be otherwise expressly provided, shall be to the county wherein such fine or forfeiture is incurred. See ante, p. 242, ch. 47, § 12.

§ 18. Nothing in this code shall be construed to repeal or alter the act passed the fifth of March 1846, authorizing the court of *Clarke* county to lay and collect a tax on dogs in said county, or the act passed the twenty-eighth of February 1846, providing more effectually for the protection of sheep in the county of *Loudoun*; or the act passed the twenty-fourth of February 1849, providing more effectually for the protection of sheep in the county of *Wythe*. 1845-6, p. 106, ch. 140; p. 104, ch. 139. 1848-9, p. 163, ch. 232.

CHAPTER LIV.

OF TOWNS.*

SEC.

1. Survey and plan of the town; how made and preserved; what it is evidence of.
2. How office of trustee vacated, and vacancy filled.
3. How election day fixed; when none prescribed in charter; or if election not had on the day prescribed.
4. Places of election.
5. How wards laid off, and the number of persons to be elected for each.
6. Notice to be given of time and place of election.

SEC.

7. Who may vote in such election. Who eligible.
8. By whom and how poll to be taken.
9. Penalty on officers for failure of duty.
10. When and where persons elected to meet. Mayor, recorder and aldermen appointed.
11. Oaths to be taken by council and mayor, &c. Term of office.
12. Council or trustees to judge of the returns, by sheriffs, of the election. Power to punish members of their board. When a new election may be held or a vacancy filled.

* An act of 1662, for building a town, (2 Hen. Stat. p. 172, ch. 16,) contained very minute provisions; the town, (*Jamestown*,) was to consist of 32 brick-houses,

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| 13. Ordinances to prescribe mayor's power over the officers of the town; who to act in his absence. | 20. } Certain sections of 36th and 53d chapters applicable to this. How |
| 14. Proceedings of council or board; journal kept thereof. | 21. } lists of town levies acted on, and returned to auditor. |
| 15. How meeting of board may be called. | 22. Lien on real estate delinquent for town levies. Sections of 53d, which apply to this chapter. Application of town levies received into treasury. |
| 16. Towns made corporations; corporate powers how exercised. | 23. Money received for a town; by whom applied. |
| 17. General and enumerated powers of the council or board. | 24. Copies of the ordinances of a town; when evidence. |
| 18. What licenses and taxes granted or imposed in towns. | 25. Construction of certain words, when used under title 16. |
| 19. How town levy to be ordered, and upon whom. | 26. Saving in favour of charters of towns. |

Survey and plan of the town.

1845-6, p. 139, ch.
182, § 9; p. 142,
§ 3.

§ 1. The council or board of trustees of any town heretofore established may, and the council or board of trustees of any town hereafter established shall, cause to be made a survey and plan of the town, shewing distinctly each lot, public street and alley, the size and number of the lots and the width of the streets and alleys, with such explanations or remarks as they may deem proper. The said plan, upon being approved by the council or board, shall be entered upon some of their books, and shall afterwards be recorded in the office of the court of the county in which such town or the greater part thereof is, or in the clerk's office of the hustings court, if

one of which was to be built by each of the 17 counties; no wooden houses were thereafter to be built within the limits of the town, nor those then standing to be repaired, but brick ones were to be erected in their stead. In 1680 it was directed that in each of the counties (then 20 in number,) 50 acres of land should be purchased and laid out for towns, the places for which are specified in the act 2 Hen. Stat. vol. 2, p. 271, ch. 5. This act seems not to have received the Royal assent. Id. p. 508. In 1691 another act was passed. Id. vol. 3, p. 58, ch. 8. This the assembly suspended, (p. 108, ch. 1,) but before the suspension, some lands had been laid out into lots and built on. Id. p. 186, ch. 10; p. 432, ch. 44. In 1705 an act passed for establishing ports and towns, containing provisions of a general and comprehensive character. Id. p. 404, ch. 42; but this was repealed by proclamation in 1710. Thenceforth the course was to pass special acts establishing towns.

In 1699 the state-house at *James City* having been burnt, and the place called *Middle Plantation*, having been "found by constant experience to be healthy," an act was passed, (which was continued in 1705,) for procuring land there for the capitol, and establishing there a city, which, in honor of King *William*, was called *Williamsburg*. Hen. Stat. vol. 3, p. 197, ch. 14; p. 419, ch. 43. Acts passed in 1727 for laying out *Fredericksburg* and *Falmouth*. Id. vol. 4, p. 234, ch. 14. In 1736 the town of *Norfolk*, which had been built under one of the general acts before mentioned, was made a borough. Id. p. 541, ch. 24. *Richmond* was established in 1742. Id. vol. 5, p. 191. *Petersburg* in 1748. Id. vol. 7, p. 602. Many other towns have from time to time been established. But since 1710 there has been very little general legislation concerning towns.

In 1778 a short act was passed to empower the freeholders of towns not incorporated, to supply the vacancies of the trustees and directors thereof. Hen. Stat. vol. 9, p. 560, ch. 28. This was amended by § 4 of the act of 1795-6, p. 44, ch. 56, and by the act of 1796-7, p. 28, ch. 45. These acts of 1778, 1795-6 and 1796-7, were revised by the act in 2 R. C. p. 319, ch. 260. The present chapter is much more comprehensive; it was framed to avoid the frequent repetition of similar provisions in acts for the establishment of towns.

such town have a hustings court, and remain in such office. It shall be evidence of the boundaries of the said lots, streets and alleys.

Of the trustees or council; and of the mayor, recorder and aldermen.

§ 2. In any town which has or is to have, trustees, for whom no periodical election is prescribed, if a trustee thereof remove his residence more than five miles from the town, or if his office otherwise become vacant, the sergeant of the town, and if none, the sheriff of the county in which such town or the greater part thereof is, shall fix upon a time for an election to supply the vacancy. 2 R. C. p. 319, ch. 260, § 1, 2, 3, 4. 1841-2, p. 129, ch. 197, § 6 to 17. 1845-6, p. 143, ch. 183, § 7.

§ 3. Where an election is directed to be annually, or in a stated number of years, for the trustees or council of any town, but no day prescribed therefor, or though a day be prescribed, yet if no election be then made, such sergeant or sheriff may in either case fix a day for such election. 1845-6, p. 137, ch. 182, § 4.

§ 4. There shall be only one place for any election of the trustees or council of any town, unless more places be prescribed by law, or by an ordinance of the town. Such place or places shall be in the town, and may be fixed by the sheriff or sergeant, unless fixed by law or ordinance. 1841-2, p. 129, § 8, 9, 15.

§ 5. The council of any town may lay off the same into wards, and alter such wards, and may prescribe for each ward a certain portion of the persons to be elected by the voters of the town, and in which ward the votes shall be given. The wards shall be so fixed as to make the number of persons entitled to vote in any ward bear to the whole number of those entitled to vote in the town, the same proportion, as near as may be, that the number of persons elected for such ward bears to the whole number elected for the town.

§ 6. Of the time and place or places for any such election, the sheriff or sergeant shall give to the voters of the town at least ten days previous notice, in such mode as he may deem best. 2 R. C. p. 319, ch. 260.

§ 7. At any such election, any white male citizen of the commonwealth, aged twenty-one years or upwards, may vote, who may be qualified to vote for members of the general assembly by virtue of a freehold in such town, or who being a resident of such town, shall, within the preceding year, have been assessed with and actually paid a part of the levy of his county at the first election, and of his town at any succeeding election. Any person shall be eligible at such election, who is qualified so to vote by virtue of such freehold, and shall have resided within the limits of the town for one year next preceding the election. Id. § 1. 1841-2, p. 128, ch. 197, § 5, 7.

§ 8. The poll at any such election shall be taken by the officer who may have given such notice. The name of each voter shall be written under the name of each person for whom he votes. And where two or more persons receive an equal num- 1845-6, p. 137, ch. 182, § 3.

ber of votes, the officer taking the poll shall decide between them. If by any act of assembly, or ordinance, more than one place be prescribed for taking the poll, the officer who may take it at the place first mentioned in such act or ordinance, shall so decide. He shall forthwith return the polls, and the names of the persons elected, to the clerk of the council or of the board of trustees.

1845-6, p. 137,
ch. 182, § 3.

§ 9. If any sheriff or sergeant fail to perform any duty required by this chapter without a reasonable excuse therefor, he shall forfeit to the town one hundred dollars.

1841-2, p. 129 § 6,
7.

§ 10. The persons so elected at any periodical election, shall meet at such place as may be fixed by law or ordinance, on the day after such election, or as soon thereafter as may be. If by a local statute relating to any town there is to be a mayor, recorder or aldermen for such town, the said persons when they so meet shall appoint them; that is to say, a mayor from among themselves, or from citizens of the state who may have resided in the town for a year and be freeholders therein, and also from among themselves a recorder, senior alderman, and so many other aldermen as may be prescribed by the statute. Of the persons so elected, such as shall not be so appointed, shall constitute the council of such town.

1841-2, p. 131, ch.
197, § 7.
1845-6, p. 142, ch.
183, § 2, 5.

§ 11. Every person elected or appointed trustee of any town, or member of the council thereof, shall take an oath faithfully to execute the same to the best of his judgment. A person appointed mayor, recorder or alderman, shall be deemed appointed to an office or post within the meaning of the thirteenth chapter. If the oath or oaths required to be taken by a person so elected or appointed, be not taken within two months after such election or appointment, the office shall be deemed vacant. The mayor, recorder, aldermen, councilmen and trustees, may hold their offices until their successors are qualified.

Ante, p. 86.

1841-2, p. 128, § 5,
16, 19, 75.
1845-6, p. 138, § 5.

§ 12. The council or the board of trustees shall judge of the returns by the sheriff or sergeant, and of the election and qualification of the persons returned; may fine members of their body for disorderly behaviour, and with the concurrence of two-thirds expel a member. If any person returned be adjudged disqualified or be expelled, a new election shall be held at the same place on such day as the council or board may prescribe, to supply the vacancy. Any vacancy occurring otherwise during the term for which any of the said persons may have been elected, may be filled by the council or board, by the appointment of any one eligible under the seventh section.

1841-2, p. 140, ch.
197, § 74.

§ 13. The mayor shall exercise such control over the officers of the town, other than the recorder and aldermen, as may be prescribed by the ordinances of the town. When the mayor is absent from the town or his office vacant, the recorder, or if he is absent from the town or his office be vacant, the senior alderman, shall exercise the like control.

§ 14. The council or board of trustees may adopt rules for the regulation of their proceedings, and elect one of their number president. When he is absent, they may appoint a president *pro tempore*. A journal shall be kept of their proceedings; and at the request of any member present the ayes and noes on any question shall be recorded. At the next meeting the proceedings shall be read and signed by the person who was presiding when the previous meeting adjourned, or if he be not then present, by the person presiding when they are read. The journal shall be open to the inspection of any voter of the town.

1841-2, p. 131, ch. 197, § 21, 24.
1845-6, p. 138, § 5;
p. 143, § 5, 6.

§ 15. A meeting of the council or board may be convened at any time upon the call of the president or of three members.

Id.

§ 16. Every town shall be a corporation, and all the corporate powers thereof shall be exercised by its council or board of trustees, or under their authority, except where otherwise provided.

1841-2, p. 131, ch. 197, § 25.

3 Munf. 358.
See post, ch. 56,
§ 1.

§ 17. In addition to the powers conferred by other general statutes, the council or board of trustees of any town shall have power to lay off streets, walks or alleys, alter, improve and light the same, and have them kept in good order; to lay off public grounds and provide all buildings proper for the town; to prescribe the times for holding markets and regulate the same; to prevent injury or annoyance from any thing dangerous, offensive or unhealthy, and cause any nuisance to be abated; to regulate the keeping of gunpowder or other combustibles, and provide magazines for the same; to provide in or near the town, water works and places for the interment of the dead; to prevent the pollution of the water and injuries to the water works, for which purpose their jurisdiction shall extend to a mile above the same; to provide for the regular building of houses in the town; to make regulations for the purpose of guarding against danger from accidents by fire, and, on the petition of the owners of not less than two-thirds of the ground included in any square, to prohibit the erection in such square of any building, or an addition to any building, more than ten feet high, unless the outer walls thereof be made of brick and mortar, or stone and mortar, and provide for the removal of any building or addition erected contrary to such prohibition; to provide for the weighing or measuring of hay, coal or any other articles for sale, and regulate the transportation thereof through the streets; protect the property of the town and its inhabitants, and preserve peace and good order therein. For carrying into effect these and their other powers, they may make ordinances and by-laws consistent with the laws of the state, and prescribe fines or other punishment for violations thereof, keep a town guard, appoint a collector of its taxes and levies, and such other officers as they may deem proper, define their powers, prescribe their

1841-2, p. 34 § 23,
to 59.
1845-6, p. 138, § 6,
7, 14; p. 142, ch.
183, § 4, 5.

duties and compensation, and take from any of them a bond with sureties, in such penalty as to the council or board may seem fit, payable to the town by its corporate name, and conditioned for the faithful discharge of the said duties.

As to town taxes and levies.

2 R. C. p. 321, ch. 261.
1841-2, p. 137, ch. 197, § 55 to 59.

Ante, p. 211, ch. 38.

§ 18. In addition to the state taxes on the licenses mentioned in the thirty-eighth chapter, the council or board of trustees may, when any thing, for which a license is so required, is to be done within the town, impose a town tax for the privilege of doing the same, and require a license to be obtained therefor, and in any case in which it sees fit, require from the person licensed bond with sureties, in such penalty and with such condition as it may deem proper, or make other regulations concerning the same. It may also impose a tax and require a license to be obtained for the privilege of keeping in the town for hire any wheeled carriage.

Id. p. 136, § 50.
1845-6, p. 139, § 7.
p. 143, § 5.

§ Leigh 120.

§ 19. It shall annually cause to be made up and entered on its journal an account of all sums lawfully chargeable on the town which ought to be paid within one year, and order a town levy of so much as in its opinion is necessary to be raised in that way, in addition to what may be received for licenses and from other sources. The levy so ordered may be upon the free male persons in the said town above the age of sixteen years, and upon any property in the said town, and on such other subjects as may at the time be assessed with state taxes against persons residing in the town.

1841-2, p. 136, ch. 197, § 51, 53, 54.
1845-6, p. 140, § 13.
Ante, p. 195 to 198, ch. 36, § 4, 5, 6, 7, 8, 10, 11, 12, 13, 14, 15, 20.

§ 20. Of the thirty-sixth chapter the fourth, fifth, sixth, seventh, eighth, tenth, eleventh, twelfth, thirteenth, fourteenth, fifteenth and twentieth sections shall be applicable to town levies as well as state taxes, in like manner as if enacted with the insertion after the word "taxes," wherever it occurs, of the words "or town levies," and with the insertion, after the words "the tax," in the fourteenth and fifteenth sections, of the words "or levy."

1845-6, p. 140, § 13.
Ante, p. 253, ch. 49, § 33 to 39; p. 279, ch. 53, § 9.

§ 21. Of the forty-ninth chapter, the thirty-third, thirty-fourth, thirty-fifth, thirty-sixth, thirty-seventh, thirty-eighth and thirty-ninth sections shall apply to town levies as well as state taxes. Of the fifty-third chapter, the ninth section shall apply also to such levies in like manner as if the word "collector" were inserted therein wherever the word "sheriff" occurs, and the word "town" where the word "county" occurs. The list of town levies shall be posted, presented and examined as the council may prescribe, and such credit given on account thereof as it may direct. The list of all whereof credit may be allowed shall be preserved in the office of the clerk of the council or board of trustees. Within one month after such list is allowed, the said clerk shall transmit to the first auditor a statement of the real estate appearing

thereby to be delinquent, shewing the amount of the delinquency on each lot.

§ 22. Upon all real estate which shall be delinquent for town levies ordered under this chapter, there shall be a lien for such levies and interest thereon at the rate of six *per centum* per annum from the fifteenth day of December, in the year in which the same may have been ordered, until payment thereof. The thirteenth and fourteenth sections of the fifty-third chapter shall apply to town as well as county levies, in like manner as if enacted with the insertion in the fourteenth section after the word "county," where it occurs first and last, of the word "or town," and after the word "court" of the words "or town council." Of the money received into the treasury on account of taxes and levies on any tract of land or lot and interest thereon, what may remain, after the commonwealth shall be satisfied thereout its lien for the taxes and interest, shall go ratably to the county and town to which levies and interest are due.

§ 23. All moneys collected or received for any town shall be applied as the council or board of trustees thereof may prescribe.

Of the ordinances as evidence; construction of certain words; effect of this chapter on charters of towns.

§ 24. The printed copies of the ordinances of any town, published under its authority, and transcripts from such ordinances or from the journal of any town council or board of trustees, certified by the clerk thereof, shall be received as evidence for any purpose for which the original ordinances or journal could be received and with as much effect.

§ 25. In any chapter under this title, the word "town" shall include a city as well as any other town; and the word "council" shall include any body or bodies authorized to make ordinances for the government of a town.

§ 26. Nothing contained in this act, in conflict with any provision of the charter of any town, shall be construed to repeal such provision.

CHAPTER LV.

OF FIRES IN TOWNS.

SEC.

1. How fire companies are formed.
2. Evidence of organization recorded. Election of officers, and regulations.
3. Commander of company to report its formation and condition of its engine, &c.

SEC.

4. Members of company exempt from militia duty.
5. Duty of members to attend on alarm of fire.
6. Meetings of company. Absentees reported to court of enquiry.

SEC.		SEC.	
7.	How fines collected, remitted or suspended.	13.	Council to fix the grade of fire wardens.
8.	Engineer and fire wardens appointed.	14.	Penalty for disobeying order of engineer or warden.
9.	They constitute fire department. When they may make by-laws.	15.	Engineer or warden in command may direct house, fences, &c., to be pulled down. Liability of town for property destroyed.
10.	Council may make ordinances as to fire companies.	16.	When town liable for property so destroyed.
11. }	Engineer and wardens to attend fires with badges. Their relative authority and command over fire companies and other persons present; their duties.	17.	Qualification of such liability.
12. }		18.	When and how fire company may be dissolved by court of enquiry.

Of fire companies.

2 R. C. p. 322, ch. 262.
1827-8, p. 15, ch. 22, § 1.
1830-31, p. 152, ch. 52.

§ 1. Any number of persons, not less than twenty nor more than sixty-four, residing in a town, may form themselves into a company for extinguishing fire on buildings.

2 R. C. id.
1827-8, p. 16, ch. 22, § 4.

§ 2. A writing stating the formation of such company, with the names of the members thereof thereto subscribed, shall be recorded in the court of such town or the court of the county wherein such town or the greater part thereof is. After which, the members of the company may elect its officers and make regulations (for effecting its objects) consistent with the laws of the state, the ordinances of such town, and the by-laws of the fire department thereof.

Id. § 2, 4.

§ 3. The commander of the company shall, within one month after any election of its officers, certify the same to the commanding officer of every regiment in which any member of the company may be enrolled, and shall within a month after the first election, and within the same time after the termination of any subsequent year, make to the regimental court of enquiry of every such regiment a report of the names of the members of his company, and of the time each of them joined it, and also of the condition of its engine, hose and other implements. For any failure to comply with this section, he shall be fined by such court of enquiry not less than three nor more than ten dollars.

Id. § 1, 2.

§ 4. Though the members of such company are to be enrolled as heretofore in the militia, yet, except when their regiment or some part of it is called into actual service, they shall be exempt from the performance of militia duty, or from fines for not attending musters, so long as the company is furnished with an engine and other proper implements for working the same, in good and serviceable condition.

§ 5. Every member of the company shall, upon any alarm of fire, attend according to the ordinances of the town or the by-laws of the fire department or the company's regulations, and endeavour to extinguish such fire.

1827-8, p. 16, § 5.

§ 6. Besides the meetings required by such ordinances, by-laws or regulations, semi-annual meetings of the company shall be held in April and October, on such days as the com-

mander thereof may appoint, to examine the state of the engine, hose and other implements, practise therewith, and see that the same are in good condition. The commander shall return a list of any members who may fail to attend any such semi-annual meeting to the next regimental court of enquiry for the regiment in which such members may be enrolled. Such court may impose a fine upon each member so failing to attend, of not less than fifty cents nor more than three dollars, and upon each commander who may fail to return such list, of not less than three nor more than ten dollars.

§ 7. Fines imposed under this chapter may be suspended 1827-8, p. 16, § 5. or remitted, or else shall be collected and appropriated, as is prescribed in relation to militia fines.

Of the fire department; and the authority of the council.

§ 8. In every town in which there may be any such company, there shall be appointed at such time and in such manner as the council of such town may prescribe, a principal engineer and likewise so many fire wardens as the council may direct.

§ 9. The principal engineer, fire wardens and commanders of fire companies in any town, shall constitute the fire department thereof; and the council may empower the fire department to make by-laws (to promote its objects) consistent with the laws of the state and the ordinances of the town.

§ 10. The council may make such ordinances in relation to the powers and duties of fire companies, fire wardens and principal engineer, as it may deem proper, provided they be not repugnant to the laws of this state.

Duty and power of engineer and wardens.

§ 11. When a fire shall break out in any town, the principal engineer and the fire wardens shall immediately go to the place of such fire, and carry with them suitable badges of their offices.

§ 12. When there, the principal engineer shall have command over the fire wardens and commanders of the fire companies, and over all other persons who may be present, and may appoint the stations and operations of the companies with their engines, and of all others, for the purpose of extinguishing the fire, removing things from any building on fire or in danger thereof, guarding the same and suppressing all tumult and disorder.

§ 13. The fire wardens shall be numbered by the council first, second, and so forth. In the absence of the principal engineer, the first warden shall possess his powers and perform his duties. In the absence of both, the second warden shall have the same powers and perform the same duties and so on.

§ 14. If any person at a fire shall refuse or neglect to obey any order duly given by the principal engineer or the warden in command, he shall for such offence forfeit five dollars.

2 Grat. 219.

§ 15. The principal engineer, or the warden commanding in his absence, may direct the pulling down or destroying of any fence, house or other thing which he may judge necessary to be pulled down or destroyed to prevent the further spreading of the fire, and for this purpose may require such assistance from all present as he shall judge necessary.

Liability of town for property destroyed.

Id.

§ 16. The owner of such property shall be entitled to recover from the town the actual damage which he may have sustained by reason of the same having been pulled down or destroyed under such direction.

Id.

§ 17. The preceding section shall not enable any one to recover compensation for property which would have been destroyed by the fire, if the same had not been pulled down or destroyed under such direction, but only for what could have been saved with ordinary care and diligence, had no such direction been given.

When and how fire company may be dissolved.

1827-8, p. 16, ch.
22, § 3.

§ 18. Whenever the fire department of such town to which any fire company may belong, or if there be no fire department of such town, whenever the regimental court of enquiry of the regiment in which the members of such company or the greater part thereof may be enrolled, shall ascertain that such company has failed, for three months successively, to consist of twenty effective members, or ascertain that it has failed for the like period of time to have or keep in good and serviceable condition, an engine, hose and other proper implements, such fire department or court of enquiry shall declare such failure and dissolve the company; and the members thereof shall no longer be exempt from the performance of militia duty or for fines for not attending musters.

Title 17.

CORPORATIONS GENERALLY.

CHAPTER LVI.

OF CORPORATIONS GENERALLY; ESPECIALLY OF THE PROPERTY A CORPORATION MAY TAKE AND THE DISPOSITION OF IT WHEN THE CORPORATION IS DISSOLVED.

SEC.

1. General powers of every corporation.
2. General restrictions on them.
3. Restrictions qualified.
4. When company for internal improvement may enter upon land to make surveys.
5. Quantity of land to be taken for internal improvement.
6. Commissioners to ascertain value of land wanted by a company, county or town.
7. } Notice of application to appoint
8. } commissioners; and their ap-
9. } pointment.
10. Oath to be taken by them.
11. Their duty and the report they are to make.
12. Proceedings of court on the report.
13. New appointment of commissioners.
14. Corporation, on paying the damages reported, may proceed to execute the work. No injunction to be awarded.
15. Provision where second report is made of different amount as damages; what judgment to be rendered.
16. Consequence of the judgment and its payment.

SEC.

16. When the sum reported as damages is paid into court, court to order its disposition.
17. How board of commissioners may be appointed to assess damages on the whole line of improvement.
18. Oath to be taken by them.
19. Their report in each case; form of.
20. Proceedings on.
21. Company may change location; proceedings thereupon.
22. Company to provide wagon ways for owners of land.
23. Streets in a town not to be occupied without its assent.
24. How a road or canal may be crossed by or altered to suit another.
25. Legislature may have one work connected with another at any point.
26. How company may take materials from land for their use.
27. Sheriff or sergeant to attend if required.
28. Disposition of its property when corporation is dissolved; it may sue and be sued, &c.

Attributes of and restrictions on corporations.

§ 1. Every corporation in respect to which it is not otherwise provided, shall have perpetual succession, and a common seal, which it may alter or renew at its pleasure, and may sue and be sued, implead and be impleaded, contract and be contracted with, purchase, hold and grant estates, real and personal, and make ordinances, by-laws and regulations, consistent with the laws of the state, for the government of all under its authority, the management of its estates, and the due and orderly conducting of its affairs.

§ 2. No incorporated company shall hold any more real estate than is proper for the purposes for which it is incorporated, nor employ its capital, money or effects, or otherwise engage, in transactions or business not proper for those pur-

1836-7, p. 57, ch. 82, § 1; p. 65, § 6; p. 75, ch. 84, § 2; p. 102, ch. 118, § 4. 1838, p. 83, ch. 108, § 2.

2 Rand. 465.
5 Leigh 471.
3 Grat. 19.

1836-7, p. 57, § 1; p. 65, § 6; p. 67, § 8; p. 75, § 2; p. 102, § 4; p. 112, § 32.

3 Rand. 136.

poses. One company shall not subscribe to the stock of another unless it be specially allowed by law.

3 Rand, 136.

§ 3. The preceding section shall not prevent a company from receiving stocks or other property in satisfaction of any judgment, order or decree, or as collateral security for or in payment of any debt, or from purchasing stocks or other property at any sale made for its benefit. If the company so receive shares of its own stock, it may either extinguish the same or sell and transfer such shares to a purchaser. While a company holds such shares of its own stock, no vote shall be given thereon.

Power of company for internal improvement to survey lands; how much land it may acquire.

2 R. C. p. 213,
§ 7.
1831-2, p. 80,
§ 29.
1836-7, p. 104, § 9.
1846-7, p. 125, ch.
144, § 3; p. 128,
ch. 146, § 4.

§ 4. Any company incorporated for a work of internal improvement, may, by its officers, agents or servants, enter upon any lands for the purpose of examining the same and surveying and laying out such as may seem fit to any officer or agent authorized by it, provided no injury be done to the owner or possessor of the land. But no company shall, under the authority of this section, throw open any fences or enclosures on any land, or construct its work through the same, or in any way injure the property of the owner or possessor, without his consent. Nor shall a company, under any provision in this chapter, invade the dwelling house of any free person, or any space within sixty feet thereof, without the consent of the owner.

How much land it may acquire; the proceedings therefor.

2 R. C. id. and
p. 224, § 34.
1831-2, p. 80,
§ 29.
1836-7, p. 104,
§ 9.
1840-41, p. 93, ch.
85, § 3.
1846-7, p. 126, ch.
144, § 3.

§ 5. The land acquired by any such company along its line generally, shall not exceed one hundred feet in width, except in deep cuts and fillings, and then only so much more shall be acquired as may be reasonably necessary therefor; and the land which it may acquire for buildings or for an abutment, shall not exceed three acres in any one parcel.

Proceedings by a company, county or town, to take land without the owner's consent.

Id.
1841-2, p. 134, ch.
197, § 40.

§ 6. If the president and directors of a company incorporated for a work of internal improvement, the court of a county or the council of a town, cannot agree on the terms of purchase with those entitled to lands wanted for the purposes of the company, county or town, five disinterested freeholders shall be appointed by the court of the county or corporation in which such land or the greater part thereof shall lie, (any three of whom may act,) for the purpose of ascertaining a just compensation for such land.

§ 7. When it is intended to apply for such appointment, ten days previous notice thereof shall be served on the tenant of the freehold, or his guardian or committee. But if there be no such tenant, guardian or committee within the county or corporation, the notice, instead of being thus served, may be published once a week for four weeks in some convenient paper, and posted at the door of the courthouse of the county or corporation, on the first day of the term next preceding the application.

2 R. C. p. 213,
§ 7.
1836-7, p. 104,
§ 9.
2 Rob. 253.

§ 8. Upon its appearing that such notice has been so given, the court shall appoint such commissioners, and in the order appointing them shall designate the day for them to meet. Any one or more of them attending on the land may adjourn from time to time until the business shall be finished.

§ 9. Before executing their duties they shall take an oath, which shall be certified in substance as follows:

Id.
1836-7, p. 106,
§ 11.

*County (or corporation,) to wit: I,
a justice of the peace for the said county (or corporation,) do certify that
that they will faithfully and impartially ascertain what will be a just compensation for such of the land of the freehold whereof
is tenant, as is proposed to be taken by the
company, (or the town or county of) for
its purposes, and will truly certify the same. Given under my
hand this day of*

§ 10. The commissioners, after viewing the land and hearing such proper evidence as either party may offer, shall ascertain what will be a just compensation for the said land, and for the damages to the residue of the tract, beyond the peculiar benefits to be derived in respect to such residue, from the work to be constructed, and shall make a report to the following effect:

2 R. C. p. 214,
§ 8, 9.
1836-7, p. 105,
§ 10.

9 Leigh 313.
1 Rob. 67.

We, , appointed by the county (or corporation) court of , by its order of the day of , to ascertain what will be a just compensation for such part of the land of the freehold whereof is tenant, as is proposed to be taken by the company, (or the town or county of) for its purposes, do certify that on the day of , the day designated in the said order, (or the day to which we were regularly adjourned from the day designated in the said order,) we met together on the said part of the land, the limits of which part were then and there described to us as follows, to wit: (here set forth the width and length of the particular part, and describe the same in such manner as to make it reasonably certain.) And after being first duly sworn, upon a view of the part aforesaid, and upon such evidence as was before us, we are of opinion, and do ascertain that for the said part, and for the damage to the residue of the tract beyond the peculiar benefits to be derived in respect to such residue from the work to be constructed, will be a just compensation. Given under our hands, this day of

2 R. C. p. 215,
§ 10, 11.
1836-7, p. 106,
§ 12, 13.

§ 11. The said report and the certificate of the justice shall be forthwith returned to the court of the county or corporation; and unless good cause be shewn against the report, the same shall be confirmed and recorded. The sum so ascertained to be a just compensation may be paid to the persons entitled thereto or into court. Upon such payment, the title to that part of the land, for which such compensation is allowed, shall be absolutely vested in the company, county or town in fee simple.

Id.

§ 12. If, however, good cause be shewn against the report, or if the commissioners report their disagreement, or if they fail to report within a reasonable time, the court may, without farther notice, as often as seems to it proper, appoint other commissioners; and the matter may be proceeded in as before prescribed.

Id.

§ 13. Whether any such new appointment be made or not, the company, county or town, on paying into court the sum ascertained by the previous report, may, notwithstanding the pendency of proceedings, enter into, and construct their work upon or through, that part of the land described in such previous report. And no order shall be made nor any injunction awarded by any court or judge, to stay the proceedings of the company, county or town, in the prosecution of their work, unless it be manifest that they, their officers, agents or servants, are transcending their authority, and that the interposition of the court is necessary to prevent injury that cannot be adequately compensated in damages.

11 Leigh 42,
12 Leigh 278.

§ 14. When, after such payment into court, a report is made which is confirmed, if the sum thereby ascertained exceed what was so paid, judgment shall be given against the company, county or town, for the amount of such excess; and if what was so paid exceed the sum ascertained by the second report, the excess shall be paid back to the company, county or town. If the sum ascertained by the report which is confirmed be not more than the sum ascertained by the first report, the party applying for the appointment of other commissioners shall pay the costs occasioned by such application, unless the original report was set aside on some other ground than that of insufficiency of compensation.

3 H. & M. 548.
3 Rand. 574.

§ 15. The company, county or town, when such judgment is rendered against it, shall thereafter have no right to possession of the land until the judgment is satisfied. From the time of such satisfaction, by the payment of the money to the persons entitled thereto, or into court, or from the time of the confirmation of the subsequent report, if no additional compensation be thereby ascertained, or from the time of the termination of the proceedings, if they be determined without such confirmation, the title to the land shall be absolutely vested in the company, county or town, in fee simple.

3 H. & M. 548.
3 Rand. 574.

§ 16. To enable the court to dispose properly of any money

so paid into court, it may have inquiries by a commissioner to ascertain what persons are entitled thereto, and in what proportions; and may make an order of publication, requiring all interested to appear before the commissioner, that their respective claims may be passed upon. After such reference to a commissioner and such publication, the court shall make such disposition of the money so paid into court as may seem to it right.

§ 17. Instead of having commissioners appointed in the manner prescribed by the sixth section of this chapter, any company incorporated for a work of internal improvement may apply to any county court, (notice thereof being given by advertisement at the door of the courthouse for thirty days, including a court day, and also by publication once a week for four weeks in some convenient newspaper,) which shall thereupon appoint five disinterested freeholders, who, or any three or more of whom, shall constitute a board to ascertain a just compensation to the owners of land upon the line of improvement within the said county, for such of the said lands as are proposed to be taken by such company for its purposes. Vacancies in the said board shall be filled by the court making the original appointment. The commissioners shall hold their offices during the pleasure of the court, and shall receive two dollars each for every day they shall be employed in the performance of their duties, to be paid by the company making application for their appointment.

§ 18. Before executing the duties of his office, each commissioner shall take an oath before a justice to the following effect: *I, _____, do swear that I will faithfully and impartially ascertain what will be a just compensation to the owner, in each case submitted to me, for such land as is proposed to be taken by the _____ company for its purposes, and will truly certify the same. Given under my hand this day of _____.* Such oath shall be certified by the justice, and with his certificate returned to and filed in the office of the county court.

§ 19. The commissioners so appointed and qualified shall, in each case submitted to them, ascertain in the manner prescribed for commissioners by the tenth section of this chapter, what will be a just compensation for the land proposed to be taken as aforesaid, and make a report to the following effect: *We, _____, commissioners duly appointed and qualified, hereby certify that on the _____ day of _____, we met together on the land of _____, proposed to be taken by the _____ company for its purposes, and then and there described to us as follows: (here set forth the width and length of the part proposed to be taken, and describe it in such manner as to make it reasonably certain,) and upon a view of the land aforesaid, and upon such evidence as was before us, we ascertained that for the said land and for the damage to the residue of the tract, beyond the peculiar benefits to be derived in respect to such residue from the work to be*

constructed, will be a just compensation. Given under our hands this day of . But notice of the time for the commissioners to meet on any land, shall be given to the owner of such land, his guardian or committee, in the manner prescribed by the seventh section, unless such notice be waived by him.

§ 20. Such report shall be returned to the court of the county in which the land shall lie, and the court shall have the like authority over it; and the proceedings thereon shall be the like in all respects as are prescribed by the eleventh, twelfth, thirteenth, fourteenth, fifteenth and sixteenth sections of this chapter.

1829-30, p. 43, ch. 51, § 1.
1846-7, p. 111, ch. 119, § 1; p. 113, ch. 121, § 4.

§ 21. Notwithstanding a company may have made a location of lands for its purposes, and proceeded to ascertain the compensation therefor, the company may afterwards change its location from time to time, as often as it may see cause; and proceedings may be had to ascertain what will be a just compensation for the lands upon any such new location, and the work may be constructed upon or through the same, and the title to such lands obtained in like manner as if it were the first location. But whenever such change of location shall be made, the title to the lands condemned for the former location shall revert to the original owner, his heirs or assigns.

Company to provide wagon ways; not to occupy streets in a town without its assent.

1836-7, p. 108, § 16.

§ 22. For every person, through whose land the road or canal of a company passes, it shall provide proper wagon ways across the road or canal, from one part of the said land to the other, and keep such ways in good repair.

12 Leigh 272.

§ 23. No company shall occupy with its works the streets of any town, until the corporate authority of the town shall have assented to such occupation, unless such assent be dispensed with by special provision of law.

How one work may be crossed by, altered to suit or connected with, another.

1836-7, p. 108, § 16.

11 Leigh 78, 81.

§ 24. If any railroad, turnpike or canal company deem it necessary in the construction of their work to cross any other railroad, turnpike or canal, or any state or county road, it may do so, provided its work be so constructed as not to impede the passage or transportation of persons or property along the same. If any such company desire that the course of any other railroad, turnpike, canal or state road should be altered to avoid the necessity of any crossing, or of frequent crossings, or to facilitate the crossing thereof, the alteration may be made in such manner as may be agreed between the company desiring such alteration, and the other railroad, turnpike or canal company, or the board of public works in the case of the

state road. And if such construction or alteration as is allowed by this section, shall cause damage to any company, or to the owner of any lands, the railroad, turnpike or canal company first mentioned, shall pay such damage. But any county road may be altered by any such company for the purpose aforesaid, whenever it shall have made an equally convenient road in lieu thereof.

§ 25. The legislature reserves the right to provide for connecting with one work of internal improvement any other work, at such point as may seem to it proper. 1836-7, p. 112, § 31.

How company may take materials from land.

§ 26. A company incorporated for any work of internal improvement may by its officers, agents or servants, enter upon any convenient lands, for the purpose of obtaining therefrom wood, stone, gravel or earth, to be used in constructing such work, or in repairing, enlarging or altering the same. But the company shall not cut down any fruit tree or any tree preserved in any field or lot for shade or ornament, or take part of any fence or building; nor take any of the said things from any lot in such town. Before taking any of the said things the company, unless it agree therefor with those having right thereto, shall give to the tenant of the freehold, or his tenant for years, at least ten days notice in writing, that at a certain time and place, to be specified in the notice, application will be made to a justice to appoint commissioners to ascertain what will be a just compensation for the same. At such time and place the justice shall appoint three disinterested freeholders as commissioners, who, after being sworn, shall view the premises and report in writing the extent to which wood, stone, gravel or earth is proposed to be taken, the nature of the injury which may be done in cutting, quarrying, digging or carrying away the same, and what will be a just compensation therefor. The notice in writing, certificate of the commissioners having been sworn, and their report, shall be forthwith returned to the court of the county or corporation. If good cause be shewn against the report, or if the commissioners cannot agree, or fail to report within a reasonable time, the court may, as often as seems to it proper, appoint other commissioners, who shall act and report in the manner before prescribed. If the report be confirmed, then upon the payment to the person entitled thereto, or into court, of the sum so ascertained, the company may take and carry away the wood, stone, gravel or earth, for which such compensation may have been allowed; and though the report may not be confirmed, yet upon the payment into court of the sum therein mentioned, it may proceed in like manner as if the report had been confirmed, and payment made of the sum thereby ascertained. Upon the coming in of a new report, after such payment into court, the court if it affirm the report, 1836-7, p. 215, § 12.
2 R. C. p. 226, ch. 236, § 7.
1834-5, p. 60, ch. 77, § 8.

shall render judgment in like manner as in cases provided for by the fourteenth section. From the time of any such judgment against the company, its right so to cut, quarry, dig, take or carry away, shall be suspended until the said judgment shall be satisfied.

§ 27. In any case in which a company, county or town may be entitled under this chapter to enter upon any lands, the sheriff or sergeant, whenever required by such company, county or town, shall attend and remove force if necessary.

Disposition of its property when the corporation is dissolved.

1836-7, p. 46, ch.
68, § 6; p. 78,
ch. 84, § 14.

7 Leigh 154.
1 Rob. 499.
2 Rob. 56.

§ 28. When any corporation shall expire, or be dissolved, or its corporate rights and privileges shall have ceased, all its works and property, and debts due to it, shall be subject to the payment of debts due by it, and then to distribution among the members according to their respective interests; and such corporation may sue and be sued as before, for the purpose of collecting debts due to it, prosecuting rights under previous contracts with it, and enforcing its liabilities and distributing the proceeds of its works, property and debts among those entitled thereto.

Title 18.

CHARTERED COMPANIES.

CHAP. 57. Of joint stock companies generally.

58. Of banks of circulation.

59. Of banks merely of deposite and discount.

60. To prevent the circulation as a currency of bills or notes not issued by banks chartered for the purpose.

61. Of works of internal improvement.

CHAPTER LVII.

OF JOINT STOCK COMPANIES GENERALLY.

How stock subscribed and paid for.

SEC.

1. Notice of the opening of books to be given; price of the shares.
2. Amount to be paid at the time of subscription in case of a bank.
3. Amount to be paid in other joint stock companies.
4. Books kept open, how long. Subscriptions sealed when necessary.

SEC.

5. If whole stock not taken in ten days, commissioner's power to keep open books, &c.

Meetings of stockholders.

6. Commissioners when to call meeting, and how; effect of a meeting to incorporate subscribers.

SEC.

7. Annual meetings of the company. List of stockholders in a book to be hung up.
8. When general meeting may be called and how.
9. Number of stockholders requisite to constitute a meeting.
10. Votes each stockholder is entitled to. Limit on vote of the state.
11. As to vote on stock transferred in less than sixty days.

Of president, directors, officers and agents.

12. President and directors—how appointed—their powers and the number of directors; their term of office; removal from office; how such vacancies are filled.
13. No compensation to president or directors unless allowed by stockholders. President and directors may fill vacancies in the board other than by removal.
14. Cashiers or treasurers; their bonds.
15. Regular books of account to be kept and open to the board.
16. When board shall meet. Its proceedings.
17. Board to report to annual meeting of stockholders. Their proceedings open to stockholders.

How board may receive subscriptions and payments for stock. Transfer and issue of certificates therefor.

18. Books of subscription delivered to directors. They may receive subscriptions or sell; at what price.
19. Shares of stock, personal estate. Transfer book kept.
20. How money received for subscriptions to be paid.
21. How subscription money may be recovered; by sale of stock.
22. How proceeds of sale applied.

SEC.

23. If subscription not paid by sale of stock, it may be recovered from subscriber.
24. No assignment of stock, unless subscription be paid, without the company's consent. Assignee and assignor liable for assessments.
25. Who deemed owner of stock as to the company.
26. Certificates, to whom issued and how.
27. When stock may be transferred.
28. Certificate to be returned when stock transferred and new issued.
29. How a certificate may issue when a former one is lost.

Dividends on stock.

30. When dividends declared. How applied if stockholder indebted to company.
31. Members of board liable for any part of the capital of which dividend is made by them.
32. When stockholders may authorize dividend of capital.
33. Notice to be published of dividend made, and of dividends remaining unpaid for two years.

Manufacturing and mining companies.

34. Lien created by such company to enure to benefit of creditors generally.
35. When such companies shall lose their corporate rights. The right to acquire them when to cease.
36. Such companies to exhibit their books, &c., to agent of the legislature.
37. The duration of their charters limited; after what time liable to be altered or repealed. Certain acts heretofore passed amended by this chapter.

How stock subscribed and paid for.

§ 1. When by an act incorporating a joint stock company, commissioners are appointed to receive subscriptions to the capital stock thereof, public notice for thirty days shall be given by them of the time and places at which books will be opened for subscriptions; and the subscriptions shall be in shares of one hundred dollars each.

§ 2. If the act be to incorporate a bank of circulation, there shall be paid by every subscriber on each share subscribed for by him, as follows—to wit: At the time of subscribing, ten dollars; immediately after the election of the first board of directors, twenty-five dollars; in thirty days from such election, twenty-five dollars; and the remaining forty dollars

2 R. C. p. 211, ch. 234, § 1.
1836-7, p. 101, ch. 118, § 2; p. 58, ch. 82, § 1; p. 75, ch. 84, § 3.

1836-7, p. 58.

in two equal payments of twenty dollars each, in three and six months after the said election.

1836-7, p. 75, ch. 84, § 4; p. 102, ch. 118, § 3.
2 R. C. p. 212, § 1.

§ 3. Upon every subscription (for shares in any joint stock company) not provided for by the preceding section, there shall be paid upon each share two dollars at the time of subscribing, and the residue thereof as required by the president and directors. The sums which under this and the preceding section are payable at the time of subscribing, shall be paid to the commissioners.

1836-7, p. 57, ch. 82, § 1; p. 102, ch. 118, § 2.

§ 4. The books for subscriptions shall be kept open for ten days. If within that time more than the whole capital stock be subscribed, the commissioners at the place first named in the act shall reduce the subscriptions so as to have the amount of such capital stock and no more; deducting the excess from the largest subscriptions in such manner, that no subscription shall be reduced while any one remains larger.

1a.

§ 5. If at the end of the ten days, so much of the capital stock shall not have been subscribed as is necessary to incorporate the subscribers, the books may thereafter be continued open or closed and re-opened, from time to time, with or without notice, as the commissioners at the said first named place may deem best, until the whole capital stock shall be subscribed, or until the election of the president and directors.

Meetings of stockholders.

2 R. C. p. 212, § 2, 3.
1836-7, p. 58, § 1; p. 75, § 3; p. 102, § 5.

§ 6. When it shall appear to the commissioners at the place first named in the act, that so much of the capital stock is subscribed as is sufficient to incorporate the subscribers, the said commissioners shall give notice thereof by publication in a newspaper, for not less than two weeks, and call a general meeting of the subscribers at a certain time and place, which time shall not be less than fourteen nor more than thirty days from the first day of such publication. The subscribers, their executors, administrators or assigns, shall stand incorporated, from the time of such meeting, unless in the said meeting it be determined otherwise.

2 R. C. p. 219, § 19.
1836-7, p. 61, 65, 66.
Id. p. 108, ch. 118, § 17.
1840-41, p. 87, § 9.
1841-2, p. 63, § 10.

§ 7. An annual meeting of stockholders in any joint stock company, whether incorporated heretofore or hereafter, shall be held on such day as is or may be prescribed by law, or if none be so prescribed, on such day as the stockholders may in general meeting from time to time appoint, and at such place as shall be fixed from time to time by the board of directors, of which notice shall be published for two weeks in a newspaper. A list of the stockholders in any bank shall, for one month before the annual meeting, be hung up in the most public room of the bank.

2 R. C. p. 213, § 5.
1836-7, p. 65, § 6; p. 76, § 5; p. 103, § 7.

§ 8. A general meeting of stockholders may be held at any time, upon the call of the board of directors, board of public works where the state is a stockholder, or of stockholders holding together one tenth of the capital stock, upon

3 Grat. 215.

their giving notice of the time and place for such meeting, for thirty days in a newspaper published in or near the place at which the last annual meeting was held.

§ 9. To constitute a meeting of stockholders, other than the annual meeting of stockholders of a bank of circulation, there must be present those who can give a majority of all the votes which could be given by all the stockholders. If a sufficient number fail to attend at the time and place for a meeting, those who do attend may adjourn from time to time until a meeting shall be regularly constituted. The annual meeting of the stockholders of a bank of circulation may be held by any number that may be present. A meeting of stockholders may adjourn from time to time until its business is completed.

2 R. C. p. 212, § 2; p. 219, § 19. 1836-7, p. 76, § 6; p. 108, § 17.

§ 10. In a meeting of stockholders, each stockholder may, in person or by proxy, give the following vote on whatever stock he may hold in the same right, to wit: one vote for each share of such stock not exceeding twenty, one vote for every two shares exceeding twenty and not exceeding two hundred, one vote for every five shares exceeding two hundred and not exceeding five hundred, and one vote for every ten shares exceeding five hundred.* But when the state is a stockholder, her vote shall not exceed two-thirds of the whole number of votes given by others in the same election or on the same question; and if the company be one in which a portion of the directors is appointed on behalf of the state, such vote shall not be cast in the election of directors. The proxy of the state shall be appointed by the governor, except when it may be otherwise provided by law.

2 R. C. p. 219, § 21. 1846-7, p. 150, ch. 160, § 7.

§ 11. When a vote is offered to be given at any meeting, upon stock transferred within sixty days before such meeting, if any present object to the vote, it shall not be counted unless the stockholder has made or shall make oath that the stock on which such vote is to be given, is held by him *bona fide*, and not by virtue of a transfer made with intent to give more votes than is allowed by the preceding section.

1836-7, p. 61, § 6; p. 108, § 18.

Of the president, directors, officers and agents.

§ 12. There shall be for every company a president and directors, who shall be a board to have all things done that are proper to be done by the company, except so far as may be otherwise provided by any law of the state or any by-law or regulation of the stockholders. The stockholders may in general meeting prescribe the number of directors by a by-law, to take effect at the next annual meeting; but unless a different number be prescribed, there shall be five directors besides

2 R. C. p. 212, § 4, 5. 1836-7, p. 61, 64, § 6; p. 76, § 6; p. 103, § 6. 1841-2, p. 63, ch. 105, § 13. 1846-7, p. 101, ch. 111, § 3, 4, 15.

* Under the laws in force before the revision there was great variety in the scale of voting, both in general and special acts. In addition to those in the margin see 1836-7, p. 108, § 18. Id. p. 61, § 6; p. 76, § 5. 1846-7, p. 101, 119, 129, 140, 146, 163, 165, 175, 203. Hereafter the rule will be more uniform.

the president. The directors, and, where it is not otherwise provided, the president also, shall be elected by the stockholders in general meeting, with this exception only, that where the governor or the board of public works may on behalf of the state lawfully appoint a portion of the directors and makes such appointment, the residue shall be elected in general meeting by stockholders other than the state. The stockholders in general meeting or other appointing power, as the case may be, may remove any director and fill the vacancy caused by such removal; but unless so removed, the directors shall continue in office until the next annual meeting of the stockholders and until their successors shall be appointed. Should the number of directors be at any time reduced below the number necessary to hold a meeting of the board, the stockholders, or other appointing power, may fill the vacancies

5 Grat. 174, 215.

2 R. C. p. 212, § 4.
1836-7, p. 62, 3, 4,
§ 6; p. 76, § 5.

§ 13. There shall be no compensation for services rendered by the president or any director unless it be allowed by the stockholders. During the absence of the president the directors may appoint a president *pro tempore*. The directors may also fill any vacancy which may occur in the office of president or director otherwise than by removal.

5 Grat. 174.

2 R. C. p. 212, § 5.
1836-7, p. 62, 63,
§ 6; p. 76, § 5; p.
103, § 7.

6 Rand. 204.
3 Grat. 215.

§ 14. The board shall appoint a cashier or treasurer and such other officers and agents as it may deem proper, and prescribe their compensation. They shall give bonds payable to the company, with such conditions as the board may require, and with such sureties as it may approve, and hold their places during its pleasure.

1836-7, p. 64, § 6.

§ 15. The board shall cause regular books of account to be kept, and balanced annually or semi-annually. All books, papers, correspondence and funds in possession of any officer of the company, shall at all times be subject to the inspection of the board or a committee thereof.

1836-7, p. 63, 64,
§ 6; p. 78, § 12.

§ 16. The board shall hold meetings at such times as they shall see fit, or the president shall require. Questions before it shall be decided *viva voce*. No member of the board shall vote on a question in which he is personally interested otherwise than as a stockholder. The names of those voting each way shall be taken down, if desired at the time by any member. There shall be a record of such votes and of all other proceedings of the board; and the same shall be verified by the signature of the president or president *pro tempore*.

2 R. C. p. 219,
§ 21.
1836-7, p. 64, 65,
§ 6; p. 78, § 12;
p. 108, § 19.

§ 17. The board shall make a report to the stockholders at their annual meeting of the condition of the company. Accompanying the report there shall be statements of the receipts and disbursements for a year ending on such day as the by-laws may prescribe, and a statement of the surplus or contingent fund then on hand. Within thirty days next before such meeting, the record of the proceedings of the board shall be open to the inspection of three or more stockholders, holding together one hundred shares of the capital stock. It shall be

produced to the stockholders when demanded by them at any meeting.

How board may receive subscriptions of, and recover instalments on, stock; transfer and issue of certificates therefor.

§ 18. Immediately after the election of president and directors, the books for receiving subscriptions shall be delivered to them. If the whole capital stock shall not have been subscribed, they shall take measures for obtaining subscriptions of the residue. They shall not, to obtain such subscriptions, sell the stock at less than par, but may fix the price of such residue at a premium, which shall be for the benefit of all the stockholders ratably.

§ 19. Shares of stock shall be deemed personal estate, and as such shall pass to the personal representative or assignee of a stockholder. A book shall be kept by the company in which the shares may be assigned.

§ 20. Immediately after the election of president and directors, the money paid upon shares at the time of subscribing, shall be paid by the commissioners who may have received the same, to such person or in such manner as the president and directors may require. In case of failure so to pay, the company may recover the same against such commissioners by warrant or by action according to the amount, or by motion in lieu of an action.

§ 21. If the money which any stockholder has to pay upon his shares, be not paid as required by the president and directors, the same, with interest thereon, may be recovered by warrant, action or motion as aforesaid; or such shares may, after notice in a newspaper for one month of the time and place of sale, be sold at public auction for ready money and transferred to the purchaser.

§ 22. Out of the proceeds of such sale there shall be paid the charges, and the money which ought to have been paid upon the said shares with interest thereon. Any surplus shall be paid to the delinquent or his representative.

§ 23. If there be no sale for want of bidders, or if the sale shall not produce enough to pay the charges, and the money which ought to be paid with interest, the company may recover against such stockholder whatever may remain unpaid, with interest thereon, by warrant, action or motion as aforesaid.

§ 24. No stock shall be assigned on the books without the consent of the company, until all the money which has become payable thereon shall have been paid; and on any assignment the assignee and assignor shall each be liable for any instalments which may have accrued, or which may thereafter accrue, and may be proceeded against in the manner before provided.

§ 25. A person in whose name shares of stock stand on the books of a company shall be deemed the owner thereof as it regards the company.

2 R. C. p. 103, § 5.
1836-7, p. 58, § 1;
p. 77, ch. 84, § 7;
p. 103, § 3.

1836-7, p. 77, ch.
84, § 10; p. 109,
§ 21, 23.

2 R. C. p. 212, § 1.
1836-7, p. 102, § 3.

2 R. C. p. 213, § 6.
1836-7, p. 58, 59,
§ 1; p. 77, § 8;
p. 104, § 8.
1844-5, p. 80, ch.
97.
1846-7, p. 203, ch.
215, § 11.

Id. and
1819-20, p. 22, ch.
25, § 1.
4 Rand. 578.

2 R. C. p. 213, § 6,
32.
1836-7, p. 77, ch.
84, § 9; p. 104,
§ 8; p. 109, § 21.

1836-7, p. 65, § 6;
p. 77, § 10; p.
104, § 9; p. 109,
§ 21.

2 R. C. 223, § 32.
1836-7, p. 78, § 11;
p. 109, § 21.

§ 26. The president and directors shall issue to each person appearing on the books of the company as owner of any shares of stock fully paid on, a certificate for such shares under the seal of the company, signed by the president, and countersigned by the treasurer or cashier.

1838, p. 26, ch. 12,
§ 2, 6, 8.

See ante, p. 232,
ch. 44, § 10, and
post. ch. 129, § 1.

§ 27. If any such person shall, for valuable consideration, sell, pledge or otherwise dispose of any of his shares of stock to another, and deliver to him the certificate for such shares with a power of attorney authorizing the transfer of the same on the books, the title of the former (both at law and in equity) shall vest in the latter so far as may be necessary to effect the purpose of the sale, pledge, or other disposition, not only as between the parties themselves, but also as against the creditors of, and subsequent purchasers from the former, subject to the provision of the twenty-fifth section.

1838, p. 26, ch. 12,
§ 2, 6, 8.

§ 28. The person to whom any such certificate may be issued, may return the same to the office of the company, and, in person, or by an attorney acting under a power from him, assign on the books of the company either the whole number of shares mentioned in such certificate, or a less number. The certificate so returned shall be cancelled and filed in the company's office. And thereupon so many new certificates shall be issued, and to such person or persons as may be proper in the case.

Id. § 8.

§ 29. When a person to whom such a certificate is issued, alleges it to have been lost, he shall file in the office of the company: 1. an affidavit, setting forth the time, place and circumstances of the loss; 2. proof of his having advertised the same in a newspaper once a week for two months; and 3. a bond to the company with one or more sufficient sureties, conditioned to indemnify all persons against any loss in consequence of issuing a new certificate, in place of the former; and thereupon the board may direct such new certificate, and the same shall be issued accordingly.

Dividends on stock.

2 R. C. p. 219,
§ 22.
1831-2, p. 72, ch.
81, § 5.
1836-7, p. 63, § 6;
p. 78, § 13;
110, 11, § 26.

§ 30. The board shall semi-annually declare dividends of so much of the nett profits of the company as it may deem it prudent to divide. If any stockholder be indebted to the company, his dividend, or so much as may be necessary, shall be passed to his credit in payment of the debt.

1836-7, p. 78, § 13.

§ 31. If the board shall declare a dividend of any part of the capital stock of the company, all the members of the board who shall be present, and not dissent therefrom, shall, in their individual capacity, be jointly and severally liable to the company's creditors for the amount of capital so divided, and may be decreed against therefor, on a bill in equity filed on behalf of such creditors; and moreover each stockholder who shall participate in such dividend shall be liable to such creditors, to the extent of the capital stock so received by him.

§ 32. The stockholders in general meeting of any company, ^{1836-7, p. 63, § 6; p. 78, § 13; p. 111, § 26.} incorporated for manufacturing or mining, and out of debt, may order dividends of capital stock. But before such dividend is made, notice of the order must be posted at the door of the courthouse of the county or corporation wherein the general meeting was held, on the first day of three successive courts, or published for three months in a newspaper circulating in the neighbourhood.

§ 33. Of every dividend declared, and of the time and place ^{1836-7, p. 111, § 28.} appointed for the payment thereof, the board shall cause notice to be published in some newspaper printed in the city of *Richmond*, or in or near to the town or place in which the principal office of the company may be situated. In January eighteen hundred and fifty, and once in every five years afterwards, they shall publish in such newspaper a list of all dividends which have remained unpaid for two years or more, with the names of the persons to whose credit such dividends stand. Every such notice or list shall be published in three successive papers.

Manufacturing or mining company not to create lien or incumbrance on its property.

§ 34. If any company for manufacturing or mining, which ^{1836-7, p. 73, ch. 84, § 17.} has been incorporated since the act passed on the thirteenth of February eighteen hundred and thirty-seven, prescribing ^{3 Grat. 215.} general regulations for the incorporation of manufacturing or mining companies, or which may hereafter be incorporated, shall, by deed of trust, mortgage or otherwise, create any lien or incumbrance on its works or property, for the purpose of giving a preference to one or more creditors of the company over any other creditor or creditors, the same shall enure to the benefit, ratably, of all the creditors of the company existing at the time such lien or incumbrance is created.

Duration of corporate privileges of such company; when its charter may be amended or repealed.

§ 35. If four-fifths of the capital stock of any such com- ^{1836-7, p. 78, § 14.} pany for manufacturing or mining, become the property of less than five persons, or if more than half of such capital stock be for more than six months the property of one person, all the corporate rights and privileges of such company shall cease. And if any such company be not organized by the appointment of a president and directors within two years from the passage of its act of incorporation, or though so organized, if it shall suspend its operations for two years, its corporate rights and privileges shall, in each of these cases, also cease.

§ 36. Every such company for manufacturing or mining ^{Id. § 15.} shall exhibit its books, and a statement of its property and condition, to such agent or agents as the general assembly may from time to time appoint to examine the same.

1836-7, p. 78, § 15.

§ 37. The act of incorporation of every such company for manufacturing or mining shall be in force for thirty years from the passage thereof, and no longer, and may, at any time after fifteen years from the organization of the company, be amended or repealed at the pleasure of the legislature. Any such act of incorporation heretofore passed, which the legislature now has or may hereafter have power to amend, shall be deemed to be amended by this chapter now or whenever such power shall exist.

CHAPTER LVIII.

OF BANKS OF CIRCULATION.*

SEC.	SEC.
1. Of the number of the directors. How chosen. No officer to be a proxy. What proxy is not valid.	18. No loan to be made to any other government than this state.
2. Who eligible as, and who incapable of being, a director.	19. When loans on stock not to be made.
3. Directors to take the oath prescribed.	20. When loans shall not be made to directors.
4. President, when and how elected. Meetings of board.	21. Restriction on the amount to be loaned individuals.
5. What officer not to engage in business but of the bank.	22. No regulation to require an endorser to be resident where the bank is.
6. Periodical examinations of the cashier's accounts.	23. List of paper discounted or purchased, to be weekly made out and kept open to public inspection.
7. How a bank may commence business. Proclamation by governor.	24. Contingent fund to be secured before dividends more than six <i>per centum</i> to be made. Amount of such fund limited.
8. Bank to receive deposits; may deal in bullion or bills, and issue notes.	25. Quarterly reports to be made to the state; what to contain.
9. What bills or notes shall not be issued; what checks not to be paid.	26. Comparative statement with the corresponding quarters of preceding years. Statements to be published.
10. What notes obligatory on bank, and how negotiable or transferable.	27. How condition of the banks examined into by public authority.
11. Same subject as to branch banks.	28. Bank notes receivable in payments to the state, until prohibited by law or by proclamation of the governor.
12. Amount a bank may owe at any time.	29. In what banks money of the state is kept. How they cease to be places of deposit therefor; provision in such case.
13. Amount of its circulation limited.	30. Bonus to the state, amount to be paid, and how applied.
14. Notes for five dollars to be paid in gold.	31. What banks are under this chapter and the fifty-seventh.
15. How payment in specie may be enforced.	
16. What discounts may be made, and at what rate of interest.	
17. Three-fourths of directors present must concur.	

* The Bank of Virginia was incorporated by an act of the 30th of January 1804. Sess. Acts 1803-4, p. 83, ch. 98; 2 R. C. p. 67, ch. 193; and its charter amended and extended by acts of 1813-14, p. 67, ch. 31, in 2 R. C. p. 76, ch. 194; 1829-30, p. 16, ch. 10; 1830-31, p. 117, ch. 48; 1834-5, p. 48, ch. 67. The Farmers Bank of Virginia was incorporated by an act of the 13th of February 1812. Sess. Acts 1811-12, p. 7, ch. 7; 2 R. C. p. 82; and its charter amended and extended by acts of

Of the president, directors and officers.

§ 1. There shall be nine directors for a bank, and seven for each of its branches, whereof five of the former, and four for each branch, shall be elected by the stockholders other than the state, in general meeting; and the residue shall be appointed by the governor on behalf of the state. If the general assembly shall see fit, it may provide by law for the appointment on behalf of the state of five of the nine, and four of the seven. No officer or director of a bank shall hereafter vote as the proxy of a stockholder in any election of directors or officers of a bank, nor shall any proxy be valid which shall have been executed sixty days before the time of election.

§ 2. The directors of banks and their branches shall be citizens of this state. And persons filling the following offices shall be incapable of being such directors, to wit: an office of trust or profit under the government of the *United States*; the office under this state of governor, member of the council of state, judge of the court of appeals or general court, attorney-general, auditor, treasurer, register, sheriff or deputy sheriff; and the office of president or director of a savings bank, or general agent of a manufacturing or mining company. At least two of the directors in office at the time of an annual election, one appointed by the stockholders and the other by the governor, shall not be re-appointed for the ensuing year. And if a director or officer of one bank or branch become a director or officer of another, the acceptance of the latter office shall vacate the former.

§ 3. No director of a bank or branch shall act as such without first taking an oath that he will not directly or indirectly discount or purchase, at a rate of interest exceeding that which the bank might demand, any note or bill which the bank or branch whereof he is a director has refused to discount.

§ 4. The directors of each bank and branch, as soon as may be after the first election, and after every annual election

1811-12, p. 15, ch. 8, in 2 R. C. p. 91, ch. 197; 1823-4, p. 10, ch. 8; 1825-6, p. 12, ch. 13; 1831-2, p. 69, ch. 77; 1834-5, p. 48, ch. 68. The Northwestern Bank and Bank of the Valley were established under an act of the 5th of February 1817. Sess. Acts 1816-17, p. 54, ch. 39; 2 R. C. p. 93, ch. 201; and their charters amended and extended by acts of 1816-17, p. 109, ch. 204; 1817-18, p. 37, 8, 9, ch. 37, 38, 39; 1818-19, p. 10, ch. 8, in 2 R. C. p. 108, 9, 10; 1820-21, p. 10, ch. 7; 1825-6, p. 12, ch. 12; 1827-8, p. 31, ch. 40; 1828-9, p. 27, ch. 25; 1829-30, p. 18, ch. 11; p. 19, ch. 12; 1830-31, p. 117, ch. 49; 1831-2, p. 69, ch. 78; 1833-4, p. 93, ch. 73. The Merchants and Mechanics Bank was incorporated by an act of the 7th of March 1834. 1833-4, p. 84, ch. 72; and its charter amended by act of 1834-5, p. 50, ch. 69.

Other acts relating to the banks, 1811-12, p. 15, ch. 9, in 2 R. C. p. 92; 1813-14, p. 71, ch. 32; p. 72, ch. 33; and October 1814, ch. 25, in 2 R. C. p. 80, 92, 93; 1815-16, p. 45, ch. 22; 1816-17, p. 15, 16, ch. 7, 8, in 2 R. C. p. 117, 18, 19; 1828-9, p. 7, ch. 4; 1830-31, Res. No. 4, p. 309; 1831-2, p. 68, ch. 76; 1832-3, p. 55, 6, 7, ch. 88 to 91. After these various acts, an act passed the 22d of March 1837, establishing general regulations for the incorporation of banks. 1836-7, p. 57, ch. 82. During the same session, to wit: on the 25th of March 1837, an act passed increasing the banking capital of the commonwealth, under which, amongst other things, the Exchange Bank of Virginia was established. Id. p. 68, ch. 83.

of directors, shall elect from their own body a president, who shall act until his successor is appointed. The board of directors shall hold meetings at least once a week.

1836-7, p. 64, § 6.

§ 5. If any officer of a bank, other than the president or a director, shall, without permission of the board of directors, engage in any business other than that of the bank, he shall immediately be removed from office.

Id.

§ 6. The directors shall once in three months, at the least, cause an examination to be made of the moneys of the bank, and a settlement to be made of the accounts of the cashier, a statement of which examination and settlement shall be recorded with the proceedings of the board.

How a bank may commence business.

1836-7, p. 59, § 1.

§ 7. The board of directors of any bank hereafter incorporated for circulation, deposit and discount, shall make the necessary arrangements for putting such bank into operation so soon as it shall possess, in the current coin of the *United States*, of its own absolute property, three-fifths of the capital stock subscribed, and shall make a return to the governor of the fact as to the amount of such current coin in possession. If by the return, or other evidence, the governor shall be satisfied that the bank has actually and in good faith, of its own absolute property, the said amount of current coin, he shall issue a proclamation declaring the fact, and that the bank is authorized to commence operations. Then, and not before, the bank may carry on such operations.

Circulation and deposits.

Id.

§ 8. Any bank authorized to carry on business as a bank of circulation, deposit and discount, may receive money to keep for depositors; buy or sell bullion; buy, sell, draw, or negotiate bills of exchange; and issue bank notes or bills, payable to bearer on demand.

1841-2, p. 61, ch.
105, § 2.
1838, p. 81, ch.
107, § 3.

§ 9. No bank shall issue any bill, note, check, order or other paper which is for a less sum than five dollars, or which if payable to bearer is not payable on demand. And no check or draft for less than five dollars shall be paid by an officer of a bank, unless it be wholly written and not in any part of it printed or engraved. Any officer violating this section shall forfeit one hundred dollars.

1836-7, p. 65, § 6.

§ 10. All bills, notes, or other paper of a bank, signed by the president and countersigned by the cashier, promising or directing the payment of money, shall be obligatory on the bank. And the same shall be transferable and negotiable if payable to order by endorsement, and if payable to bearer by delivery.

1836-7, p. 67, 68,
ch. 82, § 9, 12.

§ 11. Though a bank have a branch, all its notes shall be signed by the president and countersigned by the cashier of

the parent bank. All such notes shall be received in payment of debts to the bank, whether contracted at the parent bank or branch.

§ 12. The total amount of the debts which a bank shall at any time owe, shall not exceed the amount of money deposited therein, and twice the amount of its capital stock actually paid in. 1836-7, p. 59, § 2.

§ 13. The total amount of the paper circulation of a bank shall never exceed five times the amount of coin in possession and actually the property of the bank. If the coin of a bank be reduced to less than one-fifth of its paper circulation, the bank shall thenceforth make no new loan or discount until its coin shall bear to its paper circulation at least the proportion of one to five. Id. p. 60, § 3.
1840-41, p. 86, ch. 77, § 6.

§ 14. All bills or notes issued by a bank, of the denomination of five dollars, shall be paid in gold of the *United States* coinage if required by the bearer. 1836-7, p. 67, § 10.

§ 15. If any note, bill or check for money due from any bank, be presented for payment within the usual business hours, at the bank or office where payable, and be not paid in specie when so presented, the party presenting the same may, on motion or by warrant, (according to the amount,) recover from the bank the amount of such bill, note or check, with interest thereon, at the rate of twelve *per centum* per annum, from the time of such failure until payment. But no such motion or warrant shall lie in respect to any note, bill or check held by or due to any other bank or incorporated company which does not, when the same is demanded, redeem its notes and pay its deposits in specie. 2 R. C. p. 117, ch. 211, § 1, 2
1836-7, p. 60, § 4.
1840-41, p. 86, § 4, 7.
1841-2, p. 61, § 4.

Of discounts.

§ 16. Any bank authorized to carry on business as a bank of circulation, deposit and discount, may loan money for a period not exceeding six months, and discount any bill of exchange, promissory note or other negotiable paper for the payment of money, which will be payable within six months from the time of discounting the same. A bank may take interest on its loans and discounts at the rate of one-half of one *per centum* for thirty days, and the interest may be received in advance. Each bank shall so regulate its loans and discounts that they shall not exceed twice the amount of the capital actually paid in. 1836-7, p. 59, § 1;
p. 62, 66, § 6.
1841-2, p. 64, ch. 106, § 1.

§ 17. No bill or other paper shall be discounted at any bank without its being submitted to the board of directors, nor without the concurrence of three-fourths of the directors present. 1839-40, p. 54, ch. 65, § 6.
1836-7, p. 63, § 6.

§ 18. No loan shall be made by any bank of this state to any other government or state whatever. Id. p. 67, § 8.

§ 19. No loan shall be made by a bank to a stockholder therein, on the security of his shares of stock in such bank, until such shares are fully paid on. Id. p. 59, § 1.

1841-2, p. 62, § 5.
1839-40, p. 54, ch.
65, § 7.

§ 20. No director of a bank, or of a branch thereof, shall be allowed to owe, in his individual character as principal, to such bank or at such branch, more than five thousand dollars. Nor shall any firm in which such director is a partner, be allowed to owe to such bank or at such branch, as principals, more than five thousand dollars. And there shall be no discount of a note or bill, other than business paper, made or drawn by one director and endorsed or accepted by another director of such bank or branch.

1839, p. 57, ch. 88,
§ 12.

§ 21. No bank shall discount any note or bill drawn or accepted by a person or company whose liabilities by virtue of that and other notes or bills drawn or accepted by him or it, and discounted at the same bank, will exceed fifty thousand dollars; nor any note or bill endorsed by a person or company whose liabilities by virtue of that and other notes or bills endorsed by him or it, and discounted at the same bank, will exceed fifty thousand dollars. But every bill or note mentioned in this or the preceding section, shall, if discounted, be binding on the parties.

1836-7, p. 68, ch.
82, § 13.

§ 22. There shall be no by-law or regulation requiring any of the endorsers, on a note or bill offered for discount at a bank or branch, to be residents of the corporation or county in which the bank or branch is located.

1841-2, p. 63, § 12.
1839, p. 57, § 12.
1841-2, p. 63, § 12.

§ 23. The board of each bank and branch shall keep a book wherein shall be entered weekly a list of bills, notes and other paper, discounted or purchased, with the amount of each, and the names of the drawers, acceptors and endorsers on each, which book shall be kept at the counter of such bank or branch during its business hours, and shall be open to the inspection of the public.

Contingent fund.

1836-7, p. 63, § 6.

§ 24. There shall be no dividend of profits of a higher rate than six *per centum* per annum on the capital paid in, until the bank shall have a surplus or contingent fund arising from profits of at least five *per centum* of its capital stock. Nor shall any dividend of profit be made by which such fund is reduced below the said five *per centum*. But the said fund is not at any time to be more than ten *per centum* (on the capital paid in) over and above the bad and doubtful debts. So much of said fund as may have accrued at any branch, shall be left with such branch, until it may be wanted to meet losses sustained by the bank.

Reports to the state and its power to examine the banks.

Id. p. 64, § 6.

§ 25. The board shall annually in January, and quarterly thereafter, transmit to the governor a statement of the condition of the bank on the first day of the month, wherein shall be specified the amount of capital stock subscribed, with the

amount paid and the amount unpaid thereon, the value of the real estate of the bank, the total amount of debts due to and from it, noting specially the amount of dealings in exchange, and the premiums paid thereon, and also bad and doubtful debts; the amount on hand of gold and silver and other coin; amount of money deposited; amount of each denomination of bills in circulation, and the aggregate of the whole; amount of bills on hand of solvent banks incorporated by this state, and also of those incorporated elsewhere; and the rate and amount of the last dividend of profits, with the amount of the surplus or contingent fund; which statement shall be signed by at least a majority of the directors, and verified by the oath of the president or cashier.

§ 26. In addition to the said quarterly statements, the several banks shall report to the governor a comparative statement of their condition for the corresponding quarter of the preceding year, and the governor shall have the same published in at least two newspapers in the city of *Richmond*. 1841-2, r. 62, § 9.

§ 27. There may at any time be an inspection of the books and examination into the proceedings of any bank, by a joint committee of the two houses of the general assembly, or a committee of either house, or one or more commissioners appointed by the assembly or the governor. 1836-7, p. 64, § 6.

Bank notes receivable in payments to the state.

§ 28. The bills or notes of any such bank, which shall have been made or shall have become, payable on demand in gold or silver coin, shall be receivable in all payments to this state. But the right is reserved to the legislature at any time, to provide by law that such bills or notes shall not be so receivable. And if any such bank shall at any time refuse to redeem its bills or notes in gold and silver coin, the governor may, by proclamation, declare the fact, and prohibit the bills or notes of such bank to be received in payment of any money due to the state. 1836-7, p. 66, § 8.

In what banks money of the state is kept.

§ 29. Of the moneys paid into the public treasury of the state, one-third shall be deposited in the bank of Virginia, one-third in the Farmers' Bank of Virginia, and one-third in the office of discount and deposit of the Exchange Bank of Virginia at *Richmond*. If either of said banks shall at any time refuse to redeem its bills or notes in gold or silver coin, no further deposits of public money shall be made therein; but such deposits shall be in the other two or one of them, if they or either continue to redeem their bills and notes in specie. And if neither so continue, or if the treasurer shall at any time have good cause to believe that injury will be sustained by the state from having its money deposited in the said banks, or 1836-7, p. 66, § 8.
1839, p. 56, ch. 88, § 7.
1839-40, p. 53, ch. 65, § 2.

any of them, he shall make a written communication to the governor on the subject, and thereafter shall keep the public money in such specie-paying bank, or such other place as the governor may direct, until further provision be made by law. In the interval before such provision, moneys to be paid into or out of the public treasury may be received or paid on the warrant of the proper auditor, requiring the treasurer to receive or pay the same, without any deposit being made or check drawn upon a bank, as prescribed by the forty-fifth chapter.

Bonus to the state.

1836-7, p. 86, § 7.
1841-2, p. 63, ch.
105, § 14.

§ 30. In consideration of the privileges granted to it, every bank shall pay to the state, out of each semi-annual dividend, a bonus of one-fourth of one per centum upon its then capital stock. The same shall be paid into the public treasury, upon the warrant of the second auditor, and be applied in payment of interest on the public debt created for internal improvement.

What banks are under this chapter.

1840-41, p. 85, 86,
87, ch. 77, § 3, 11.
1841-2, p. 63, § 15.

§ 31. Every bank or banking company which has been or may be authorized by law to carry on business as a bank of circulation as well as of deposit and discount, shall be subject to, and governed by the provisions of this chapter, and of the fifty-seventh chapter so far as consistent herewith, and of any future laws which may be passed to alter or modify the same; the legislature reserving the right to repeal, alter, or modify the charter of any bank at its pleasure.

CHAPTER LIX.

OF BANKS MERELY OF DEPOSIT AND DISCOUNT.

SEC.

1. Savings banks which are subject to this and future laws.
2. Who to be directors; meetings of the company, annual and called.
3. President of board and other officers, appointed.

SEC.

4. Powers and duties of the board.
5. How amount of certificates may be recovered.
6. How funds of the company may be invested.
7. Capital stock may be increased; to what amount.

1838, p. 83, ch.
108, § 1; p. 85,
§ 8.

§ 1. Every savings institution, savings society or savings bank, which since the act of the twenty-fourth day of March eighteen hundred and thirty-eight has been, or hereafter may be, incorporated, shall be subject to and governed by the pro-

visions of this chapter, and of any future laws which may be passed to repeal, alter or modify the same.

§ 2. The seven persons first named in the act incorporating such institution, society or bank, shall constitute the first board of directors thereof. They shall continue in office until the first meeting of the members. At such first meeting, and at every annual meeting, directors shall be elected who may be removed by the members in general meeting, but unless so removed, shall continue in office until their successors shall be elected. If the act of incorporation designate no day for the annual meeting, or no particular number of directors, the by-laws may prescribe said day or number. Unless so designated or so prescribed, the day for the annual meeting shall be the first Thursday of January, and the number of directors elected by the members, nine. A meeting may also be called in pursuance of the by-laws. Any such meeting may adjourn from time to time.

1833-4, p. 95, ch. 74.
1836-7, p. 181, ch. 190, § 2; p. 185, ch. 192, § 2.
1838, p. 83, ch. 108, § 3; p. 177, ch. 241, § 1.
1839-40, p. 108, ch. 138.

§ 3. The directors shall appoint one of their body president and may fill any vacancy occurring in the board, unless it be by removal, in which case the members shall fill the same in general meeting. The board shall appoint (to hold during its pleasure) the subordinate officers and agents, prescribe their compensation, and take from them such bonds with such sureties as it may deem fit.

1838, p. 83, ch. 108, § 3.

§ 4. The board shall regulate the admission of members and furnish proof of their admission. It may receive money on deposit and grant certificates therefor; but no such certificate shall be for less than five dollars. The board may also make by-laws and regulations for managing the property of the institution, conducting its business and paying its expenses; subject always to the power of the members in general meeting to repeal or modify such by-laws and regulations, and make others.

Id. § 3, 4.

§ 5. If any certificate of deposit be presented for payment, at the time and in the manner mentioned therein, and be not then paid, with all the interest due thereon, the depositor, his personal representative or assignee, may, by warrant or motion, (according to the amount,) recover from the institution, society or bank, the whole amount due for principal and interest at the time of the certificate being presented, with interest on the whole at the rate of ten *per centum* per annum from that time till payment.

Id. p. 84, ch. 108, § 7.

§ 6. The money received on deposit, and other funds of the institution, society or bank, may be invested in or loaned on any stocks or real security, or be used in purchasing or discounting bonds, bills, notes or other paper, subject to the following restrictions: that no security for money or other valuable thing which may have become payable, other than certificates of debt of this state, or of the *United States*, or of corporations, shall be purchased for less than the full amount thereof, with all the interest that may be due thereon, and no

1831-2, p. 69, ch. 79.
1835-6, p. 57, ch. 87, § 1.
1838, p. 83-4, § 2, 4, 5.
1841-2, p. 64, ch. 106, § 1.

debt or claim to become due, other than such certificates, shall be purchased or discounted at a rate of discount or interest exceeding the rate of one half of one per centum for thirty days. But the interest may in any case be received in advance.

1846-7, p. 185, ch.
194, § 2; p. 186,
ch. 195, § 3; ch.
196, § 2.

§ 7. The capital stock of any such institution, society or bank, may be increased from time to time to a sum not exceeding one hundred thousand dollars.

CHAPTER LX.

TO PREVENT THE CIRCULATION, AS A CURRENCY, OF BILLS OR NOTES NOT ISSUED BY BANKS CHARTERED FOR THE PURPOSE.

SEC.

1. Unchartered company not to issue notes for circulation as currency. Contracts to form company for such purpose, void.
2. All contracts and securities for such dealing, void. Money paid under them recovered back.

SEC.

3. The capital stock of such company vested in commonwealth. Proceedings to recover the same.
4. Every member of such company personally liable.

§ R. C. p. 114,
ch. 208, § 1, 5.
1831-2, p. 69, ch.
79.

1 Rand. 76.
10 Leigh 700.

§ R. C. p. 113, ch.
208, § 3, 7.
4 Leigh 223.

§ 1. No association or company, other than a bank or banking company governed by the fifty-eighth chapter, shall issue, with intent that the same be circulated as currency, any note, bill, or other paper or thing; or otherwise deal, trade or carry on business as a bank of circulation. All contracts made for forming any such association or company shall be void.

§ 2. All contracts and securities that may originate from, or be made or obtained in whole or in part by means of, any such dealing, trade or business, shall be void. And if any person pay any money or other valuable thing on account of any such contract or security, he, or his personal representative or assignee, may, by suit brought within one year after such payment, recover back the amount or value of such payment from the person to whom or to whose use it may have been made, or from his representative.

§ R. C. p. 113, ch.
208, § 2.

4 Rand. 143.

§ 3. The capital stock of every such association or company, whether paid up or merely subscribed, shall belong to the commonwealth; and the attorney-general, whenever informed of the existence of any such association or company, shall institute a suit in a court of equity holden in the city of *Richmond*, for the purpose of recovering the said capital stock. In such suit, all or any of the members of such association or company, and any officer, agent or manager thereof, may be made defendants and compelled to exhibit all their books and papers, and an account of everything necessary to enable the

court to decree. But no disclosure made by a defendant in such suit, and no books or papers exhibited by him in answer to the bill or under the order of the court, shall be used as evidence against him in any case at law.

§ 4. Every member of any such association or company, ^{1a.} made defendant in such suit in equity, shall be held liable to the commonwealth, and be decreed against for his proportion of the capital stock held in such association or company by him, or by any person for his use or benefit, at the institution of such suit or at the time of the decree. Such decree against any defendant shall be a bar to a proceeding at law against him for any act done in violation of this chapter*.

CHAPTER LXI.

OF WORKS OF INTERNAL IMPROVEMENT.†

SEC.	SEC.
1. To what companies this chapter applies.	8. When toll-gate may be erected on a section of the road.
2. Certain preliminary expenses; how paid.	9. } How complaint of section being
3. How roads made and bridges built and kept.	10. } out of repair may be inquired
4. Milestones.	11. } into. How report made and
5. Branch roads or lateral works.	12. } filed. Costs, how paid.
6. Penalty for injuries to company's works.	13. Tolls suspended on section out of repair until put in good order. Proceedings thereon.
7. Right of state to become a stockholder.	14. Tolls on turnpikes, when not prescribed otherwise.

* This chapter, as reported by the revisors, contained four additional sections; they were a revisal of the acts in 2 R. C. p. 111, ch. 207; id. ch. 208, § 1, 4, 6, 10. 1819-20, p. 9, ch. 8, § 1, 2, 3; 1820-21, p. 36, ch. 36, § 1. After those sections were struck out, § 16, 17, 18 and 19 of ch. 198 of this code were reported and adopted.

† Many acts having, from time to time, been passed to associate subscribers, for making artificial roads, (see 1795-6. p. 25, ch. 31, et seq.,) the legislature passed the act of the 7th of February 1817. prescribing certain general regulations for the incorporation of *turnpike* companies. It is in the session acts of 1816-17, p. 41, ch. 38, and 2 R. C. p. 211, ch. 234.

At an early period, some attention was given in *Virginia* to the improvement of internal navigation. Several acts passed for cutting *canals* in 1772. 8 Hen. Stat. p. 556, ch. 28; p. 562, ch. 29; p. 564, ch. 30; p. 570, ch. 31. In 1784, the legislature granted to *James Rumsey* the privilege (for 10 years,) of constructing and navigating boats invented by him, that would greatly facilitate navigation against the current of rapid rivers. 11 Hen. Stat. p. 502. And in 1787, on the representation of *John Fitch* of *Pennsylvania*, that he had constructed an easy and expeditious method of *impelling boats through water by the force of fire or steam*, an act was passed vesting him with the exclusive right of constructing and navigating every species of boats or water craft which might be impelled through the water by the force of fire or steam, within this state, for 14 years. 12 Hen. Stat. p. 616.

The *Chesterfield railroad*, built under the acts of 1827-8, p. 59, ch. 93, and 1828-9, p. 85, ch. 96, was the *first* railroad in *Virginia*. It was followed by the *Petersburg railroad*, built under the act of 1829-30, p. 59, ch. 62. Transportation on the former was with horse power; on the latter by *steam*. Other charters being granted from time to time, the legislature passed the act of the 11th of March 1837, prescribing certain general regulations for the incorporation of railroad companies. 1836-7, p. 101, ch. 118.

SEC.	SEC.
15. Tolls may be imposed for sections or parts of them.	32. When tolls of certain companies may be changed.
16. Rates for canals, bridges and other works.	33. Right of the state to exercise certain rights as to turnpike companies, subject to certain sections of the act of 1817.
17. Tolls on railroads; when they may be demanded. Companies to have exclusive right and bound to transport articles or persons.	34. The charters of certain companies liable to be altered.
18. Penalty for failures.	35. When tolls of certain companies may be regulated according to act of 1837.
19. Rates of toll on railroads.	36. When tolls may be reduced, of companies making profits exceeding 15 <i>per centum</i> .
20. How terms for transporting mail fixed.	37. When and on what terms state may become the owner of the works, &c., of a company.
21. List of tolls printed and posted up.	38. County court may require poll to be opened and take the sense of the freeholders as to a subscription by county.
22. Penalty for passing on work without paying toll.	39. Duty of commissioners of elections thereupon.
23. Penalty for demanding more than the lawful toll.	40. If three-fifths of freeholders be in favour of subscribing, justices to be summoned to meet at June court.
24. Special provision as to troops, &c. and military stores.	41. Justices may determine amount to be subscribed, and appoint agents therefor.
25. Company may construct a telegraph along its line.	42. How the subscriptions paid. How loan may be obtained.
26. Power to borrow money, when.	43. How the stock vests, is represented and dividends collected and applied; court to appoint proxy and agent.
27. Sale under deed of trust or mortgage from company; what it passes; company dissolved, and purchaser a corporation.	
28. Rights and liabilities of the purchaser as such.	
29. Old company still to be subject to last section of 52d chapter.	
30. Reports from company to board of public works, to be made; what to contain, and their form.	
31. When state may issue <i>quo warranto</i> or take possession of works.	

To what companies this chapter applies.

§ 1. Every company which is governed by the act passed on the seventh day of February eighteen hundred and seventeen, prescribing certain general regulations for the incorporation of turnpike companies, or by the act passed on the eleventh day of March eighteen hundred and thirty-seven, prescribing certain general regulations for the incorporation of railroad companies, and every company which, after the commencement of this act, shall be incorporated to construct any work of internal improvement, shall be governed by the provisions contained in the fifty-seventh chapter and in this chapter, so far as they can apply to such company without violating its charter.

Of the preliminary surveys; and the construction and protection of the works.

§ 2. Expenses incurred, prior to the organization of any company, for preliminary surveys, or for stationery or advertising, may, if deemed reasonable by the president and directors, be paid by their order.

§ 3. Every road shall be of the width, and its works constructed in the manner, prescribed by the act of incorporation.

Bridges shall be made where necessary ; and all the works of the company kept in good order.

§ 4. The company shall place along its work milestones or posts, whereon the distance from or to some well known point, or from or to the beginning or end of the work, shall be correctly and plainly denoted by letters and figures. 2 R. C. p. 225, § 31.

§ 5. The president and directors of any company incorporated to construct a railroad or other work of internal improvement, may cause to be made in connection therewith branch railroads or lateral works, not exceeding two miles each in length ; and, under a resolution adopted in general meeting by two-thirds of all the votes of all the stockholders, may cause to be made branch railroads or lateral works, not exceeding ten miles each in length. 1836-7, p. 110, § 25.

§ 6. Any person who shall wilfully destroy or injure any of the works or property of a company, shall be liable to such company for three times the actual damages thereby sustained. 1835-6, p. 48, ch. 72, § 1. 1836-7, p. 112, § 34.

Right of the state to become a stockholder.

§ 7. The right is reserved to the state to subscribe within one year after the first general meeting of the stockholders in any company, for two-fifths of its capital stock, or so much of the said two-fifths as may not have been subscribed by others. Id. § 31.

When a turnpike company may receive tolls.

§ 8. As often as a section of five miles of a turnpike road shall be completed, the court of the county wherein the section or the greater part thereof may lie, shall, on the application of the turnpike company, appoint three disinterested freeholders to report in writing the condition of the section. On such report no order shall be taken, except in the presence of the commonwealth's attorney for the county, or of some other attorney acting in his stead. If on the report, and such other evidence as may be offered, the court shall be satisfied that the section is not completed according to law, judgment shall be rendered against the company for all costs, including a fee to the attorney of ten dollars. If it shall be satisfied that the section is so completed, it shall enter of record an order declaring that fact. After the completion of all the full sections, if there remain any fractional part of a section, the like proceedings shall be had as to such part. When such declaration shall have been entered as to any section or part of a section, the company may erect a toll-gate therefor, and demand and receive the lawful tolls. 2 R. C. p. 218, § 17 ; p. 216, § 14. 1829-30, p. 44, ch. 51, § 2.

§ 9. Any person alleging that any part of a section of a turnpike road is out of repair, may apply to a justice to issue a warrant to summon three disinterested freeholders to meet on the said section, at a day specified, and examine the same ; and such warrant shall be issued upon its appearing to the 2 R. C. p. 219, § 23. 1841-2, p. 68, ch. 115. 1843-4, p. 67, ch. 88.

justice that reasonable notice of the application has been given to the president or some director of the company, or to the person entrusted with the care or repair of that section.

R. C. p. 219,
§ 23.
1841-2, p. 68, ch.
115.
1843-4, p. 67, ch.
88.

§ 10. The said freeholders shall meet pursuant to the summons and take an oath faithfully to perform their duty and make a report of the condition of the said section to said justice, in whose presence the examination shall be made.

Id.

§ 11. The report of the freeholders shall be annexed to the warrant, and shall be to the following effect: *We, , freeholders named in the warrant hereto annexed, certify that we have, pursuant thereto, examined the section therein mentioned, and our decision is, that the same is (or is not) in good repair in every part thereof.*

2 R. C. p. 220, 1,
§ 23.

§ 12. The report shall be countersigned by the justice, and, with the warrant, shall be forthwith returned by him to the clerk's office of the county court, to be there preserved and recorded. The fees for such record, and for summoning the freeholders, shall be paid by the company, where the decision is against it; otherwise, by the informer.

Id.

§ 13. All tolls upon any section so pronounced not in good repair, shall be suspended from the time of such decision until the said section shall be put in good repair, and ascertained so to be as follows: on the application of the president, or one of the directors, of the company, a justice shall issue his warrant for summoning the same, or three other disinterested freeholders, to be named in the warrant, to meet on the said section at a certain specified time, (which shall be as soon as convenient,) and ascertain whether the said section is in good repair or not; and the proceedings upon such warrant shall be the same as are prescribed in the three preceding sections; the officer's fees shall be paid by the company. But nothing contained in the preceding five sections, shall be construed to refer to any turnpike placed under the exclusive control of the board of public works by the general assembly.

Rates of toll on other works than railroads.

2 R. C. p. 216,
§ 14; p. 218 § 17.

§ 14. When different rates are not prescribed by law, the following tolls may be received on a section of five miles of a turnpike which has been completed, to wit: six and a quarter cents for twenty sheep or hogs, and twelve and a half cents for twenty cattle, and so in proportion for a less or greater number; three cents for a horse, mare, mule or gelding; ten cents for a two-wheeled riding carriage; twenty cents for a four-wheeled riding carriage; and for a cart or wagon, if the wheels are not more than four inches wide, six and a quarter cents for each animal drawing it, and if the wheels are more than four and less than seven inches wide, three cents for every such animal, and if the wheels are seven inches wide or more, one cent for every such animal. For a fractional part of a section, tolls may be received, bearing the same proportion to the tolls for a full section that the said fractional part bears to such full section.

§ 15. The said tolls may be demanded of every person passing the toll-gate, for the section or fractional part, whether he shall have travelled the whole or only a part of the section or fractional part. 1819-20, p. 22, ch. 25, § 2.

§ 16. Where the tolls for any canal, navigation or bridge company, are not prescribed by its charter, the board of public works shall fix such as may seem to it reasonable, and may alter the same at its pleasure. 1836-7, p. 126, ch. 144, § 6; p. 131, ch. 147, § 11; p. 147, ch. 153, § 8.

When and how a railroad company shall transport; and its rates of toll.

§ 17. So soon as any portion of a railroad may be ready for transportation, the railroad company may, by its officers and agents, or by contractors, transport persons and property on the same, for which purpose there shall be kept in good order such locomotives, cars and other things, as may be proper. The company shall have the exclusive right of transportation on its road; and shall, upon the payment or tender of the lawful rates of toll, transport to and deliver at any depot, or other regular stopping place indicated by the owner, such articles as shall be delivered or offered at any depot or other receiving place, in proper condition to be transported. The property of all persons shall, as far as practicable, be transported in the order of time in which it shall be delivered or offered, and the tolls paid or tendered. 1836-7, p. 109, § 22; p. 110, § 24.

§ 18. If the railroad company shall, after payment or tender of the lawful tolls, fail to receive or to transport or deliver in a reasonable time any property so delivered or offered, or fail to take up or set down any passenger at such depot or other regular stopping place as he may desire, or if the said company shall demand and receive more than is lawful, it shall forfeit to the injured party a sum, to be recovered by motion or action, of not less than twenty-five nor more than one hundred dollars. Id. p. 109, § 22.

§ 19. On a railroad on which different rates are not prescribed by law, the following rates of toll may be charged for transportation, to wit: of a person, and his baggage, within a hundred and fifty pounds, not exceeding six cents per mile; of produce and other articles, except gypsum and lime, not exceeding eight cents per ton per mile; and of gypsum and lime, not exceeding four cents per ton per mile. Where articles weigh less than four pounds to the cubic foot, a toll may nevertheless be charged on each cubic foot as for four pounds weight. And where the articles in any one consignment weigh less than one hundred pounds, a toll may be charged on the same as for one hundred pounds weight. If, for the transportation of any person with his baggage, or for any consignment, the whole charge, at the rates before mentioned, would be less than twenty-five cents, the same may nevertheless be charged as a minimum. For the weighing, storage Id. p. 110, § 24; p. 116, ch. 121, § 2. 1846-7, p. 105, ch. 114, § 3.

and delivery of articles at any depot or warehouse of the company, a charge may also be made, not exceeding the ordinary warehouse rates charged in the town in which, or nearest to which, the depot or warehouse is situated.

Acts of Congress,
1837-8, p. 141, § 2.
1836-7, p. 110,
§ 24; p. 112, § 36.

§ 20. Congress having established every railroad a post route, every railroad company shall cause the mail to be transported on its railroad, on such terms as may be agreed on by the postmaster-general and the company; and if they cannot agree, then on such terms as the governor of the state, the attorney-general and the proxy of the board of public works in such company, shall adjudge to be reasonable, after hearing the views of the company and of the postmaster-general.

Collection of tolls.

2 R. C. p. 225,
§ 31.

§ 21. Every company shall, from time to time, cause a list of its rates of toll to be printed, and have such rates posted where they can readily be seen by persons using its work. When the rates of a turnpike company are not posted at its toll-gate, no tolls shall be received thereat.

2 R. C. p. 218,
§ 18, 25.
1842-3, p. 64, ch.
94, § 2.
1846-7, p. 126, ch.
144, § 7.

§ 22. A collector of tolls for any company may refuse to let any person or thing pass on the company's work, until the toll be paid. If any person or thing pass the toll-gate or other proper place for payment, without paying or tendering the toll, such person, or the owner, or person in possession of such thing, shall forfeit to the company ten dollars. And the like forfeiture shall be incurred where any person or thing, subject to the toll of a turnpike company, is passed through any private gate, bars or fence, for the purpose of evading the payment of the toll. Any such collector knowing of a violation of this section, shall immediately make it known to the president or one of the directors. If he fail so to do, he shall forfeit to the company twenty dollars, which may, if so much of his compensation remain unpaid, be deducted therefrom.

2 R. C. p. 221,
§ 25.
1846-7, p. 126,
§ 7.

§ 23. If any collector shall receive, for tolls, more than is lawful, the company in whose service he may be, shall pay to the party grieved thereby the amount unlawfully received and two dollars besides.

As to tolls on persons in military or naval service; and on their arms, &c.

2 R. C. p. 218,
§ 18.
1836-7, p. 110,
§ 24.

§ 24. In time of war, invasion or insurrection, troops or persons in the military or naval service of this state, or of the *United States*, with their arms, munitions and baggage, shall be promptly transported on a railroad, in preference to other persons and property. And when troops or persons in such service pass on a work of internal improvement, the tolls on them shall not exceed, on a railroad, one-half, and on another work one-fourth of the rates on other persons.

Company may construct a telegraph.

§ 25. Any company may construct and maintain along the line of its improvement an electric telegraph for its own use and that of the public, and make charges on messages and intelligence conveyed thereby. 1846-7, p. 79, ch. 92, § 1; p. 86, ch. 98, § 3.

Power to borrow money.

§ 26. No company, which by its charter has no express power so to do, shall borrow money until there shall be paid up and expended or appropriated, the whole amount of capital stock subscribed, with the exception only of losses by delinquent or insolvent stockholders. But the president and directors may borrow an amount not exceeding that part of the capital stock which is unsubscribed, and may issue certificates for the money so borrowed, and may make such certificates convertible, within a prescribed time, into stock of the company, at the pleasure of the holder. 1836-7, p. 111, § 29.

Sale of company's property under a deed of trust.

§ 27. If a sale be made under a deed of trust or mortgage, executed by a company on all its works and property, and there be a conveyance pursuant thereto, such sale and conveyance shall pass to the purchaser at the sale, not only the works and property of the company as they were at the time of making the deed of trust or mortgage, but any works which the company may, after that time and before the sale, have constructed, and all other property of which it may be possessed at the time of the sale, other than debts due to it. Upon such conveyance to the purchaser, the said company shall *ipso facto* be dissolved. And the said purchaser shall forthwith be a corporation, by any name which may be set forth in the said conveyance, or in any writing signed by him and recorded in the court in which the conveyance shall be recorded. 1844-5, p. 76, ch. 90, § 2. 1846-7, p. 97, ch. 109, § 2; p. 102, ch. 111, § 10; p. 104, ch. 113, § 3.

§ 28. The corporation created by or in consequence of such sale and conveyance shall succeed to all such franchises, rights, and privileges, and perform all such duties, as would have been had or should have been performed, by the first company but for such sale and conveyance; save only that the corporation so created shall not be entitled to the debts due to the first company, and shall not be liable for any debts of or claims against the said first company, which may not be expressly assumed in the contract of purchase, and that the whole profits of the business done by such corporation shall belong to the said purchaser and his assigns. His interest in the corporation shall be personal estate, and he or his assigns may create so many shares of stock therein as he or they may think proper, not exceeding together the amount of stock in the first Id. 1840-41, p. 96, ch. 90, § 2.

company at the time of the sale, and assign the same in a book to be kept for that purpose. The said shares shall thereupon be on the footing of shares in joint stock companies generally, except only that the first meeting of the stockholders shall be held on such day and at such place as shall be fixed by the said purchaser, of which notice shall be published for two weeks in a newspaper.

See ante, p. 298,
ch. 56, § 28.

§ 29. The debts due to and by, and claims against, the said first company mentioned in the preceding section, shall be subject to the provisions contained in the last section of the fifty-sixth chapter, and the said company, notwithstanding its dissolution aforesaid, shall, as to said debts and claims, have the power and perform the duties prescribed by that section.

Reports from company to board of public works.

2 R. C. p. 222, 3,
§ 29, 30.

§ 30. The president and directors of every company incorporated to make a work of internal improvement, to the stock of which there is no subscription by the board of public works, shall make the following reports to the board, to wit.: at the end of one year from the completion of such work, a report shewing the condition of the work, the whole amount of capital expended in its construction, with the several heads of expenditure, the amount of tolls received during each preceding year, the annual expenses of the current business, and the nett profit or loss; which report shall be accompanied by a plat or map of the work; and at the end of every year thereafter, a further report, shewing the condition of the work, the amount and kinds of expenditures and receipts, and the nett profits for such year. Where a particular form shall have been prescribed by the board of public works, and made known to the company, the report shall be in that form. In case of failure to make any such report for sixty days, the company shall forfeit one thousand dollars, unless good cause be shewn for such failure.

Power of state over companies.

2 R. C. p. 222,
§ 24, 28.
1836-7, p. 108, 9,
§ 20.

§ 31. If the works of any company be not commenced and completed within the time prescribed by its act of incorporation, or if after such works, be completed the company shall abandon the same, or for three successive years cease to use and fail to keep them in good repair, in each of these cases the state may either proceed by *quo warranto*, or take possession of the works and property of such company, and in case of so taking possession, shall keep the same in good repair, and have all the rights and privileges previously vested in the company. But the state shall pay the company for such works and property, the value of the same at the time it takes possession thereof.

2 R. C. p. 204, ch.
228, § 12.

§ 32. The tolls of every company subject to the twelfth section of the act passed on the fifth day of February eighteen hundred and sixteen, creating a fund for internal improvement, may be reduced or augmented according to that section.

§ 33. In the case of any company subject to the twenty-ninth or thirty-second section of the act passed on the seventh day of February eighteen hundred and seventeen, prescribing certain general regulations for the incorporation of turnpike companies, the board of public works may exercise such powers as are given by the said twenty-ninth section, and the commonwealth may vest such authority and have such rights as are contemplated by the said thirty-second section. 2 R. C. p. 222, 4, ch. 234, § 29, 32, 35.

§ 34. The charter of every company which is governed by the act passed on the eleventh day of March eighteen hundred and thirty-seven, prescribing certain general regulations for the incorporation of railroad companies, and of every company hereafter incorporated, which shall be governed by this chapter, may be altered or modified by any future legislature as may seem to it proper, except that no law shall be passed for taking from a company its works or property without making to it just compensation, or for changing its tolls without its assent, in any other cases than such as are specially provided for in this chapter. 1836-7, p. 112, § 35.

§ 35. When the nett profits of any company which is governed by the twenty-sixth section of the said act passed on the eleventh day of March eighteen hundred and thirty-seven, shall amount to a sum equal to the capital stock, with six *per centum* per annum interest thereon, its tolls may be fixed and regulated as prescribed by that section. Id. p. 111, ch. 118, § 26.

§ 36. When the nett profits of any company hereafter incorporated, which may be governed by this chapter, shall be such that, but for this section, dividends might be declared out of the said profits exceeding the rate of fifteen *per centum* per annum on the capital stock invested, laws may be passed for reducing the tolls of the company. But no law shall reduce the tolls so as to prevent dividends of fifteen *per centum* per annum, within thirty years from the time the first dividend of profits of the said company was declared, or so as to prevent dividends of twelve *per centum* per annum after the said thirty years and before fifty years from the same time, or so as to prevent dividends of ten *per centum* per annum after the said fifty years. 2 R. C. p. 204, ch. 228, § 12. 1846-7, p. 102, ch. 111, § 6.

§ 37. In the case of any company hereafter incorporated, which may be governed by this chapter, if, after thirty years from the time the first dividend of profits of such company was declared, the state chooses it may have the works, and all the property, rights and privileges of such company on paying therefor at the least the amount of capital paid in, and, over and beyond that, such sum as with the dividends which the stockholders may have received out of the profits of the company will give them on the capital paid in the following nett profit from the time of payment thereof by the stockholders to the time the state makes such payment, to wit: a nett profit of fifteen *per centum* per annum to the expiration of

the said thirty years; a nett profit thereafter of twelve *per centum* per annum until the state makes such payment, if that be within fifty years from the said first dividend, and if it be not, then until the end of the said fifty years, and afterwards, a nett profit of ten *per centum* per annum until the state makes such payment.

*Of subscriptions by counties to works of internal improvement.**

1847-8, p. 171, ch.
129, § 3.
1848-9, p. 41, ch.
71.

§ 38. When a joint stock company shall have been incorporated to construct a railroad or turnpike through, by or near to any county, likely to be benefited thereby, the county court of such county may make an order requiring the sheriff and commissioners of elections, at the next general election for members of the general assembly, or at any other time, not less than one month from the date of the order, which shall be designated therein, to open a poll and take the sense of the freeholders of such county on the question, whether the said court, on behalf of such county, shall subscribe to the stock of such company. The said order shall state the maximum amount proposed to be subscribed, which in no case shall exceed one-third part of the stock to be subscribed by others than the state.

Id. § 39. The commissioners of elections, after taking an oath fairly to take and return the poll, shall open poll books at the courthouse of the county, and at the other places therein at which separate elections for members of assembly are held, and shall cause to be entered upon such books, in a column to be headed "subscription," the names of the freeholders of the county who attend and are in favour of the subscription; and shall cause to be entered upon said books, in another column, to be headed "no subscription," the names of those freeholders of the county who attend and are opposed to the subscription. The commissioners who take the said polls shall certify them, and, within five days after the day they were taken, return them to the clerk of such county court.

Id. § 40. If by the said poll books it shall appear that three-fifths of the freeholders of such county, voting upon the question, are in favour of the subscription, the said court, at its term next after taking the said polls, shall make an order requiring the sheriff to summon the acting justices thereof to attend the next June term of the court, to carry out the wishes of the freeholders.

Id. § 41. The acting justices being summoned as directed in the preceding section, and a majority being present, shall have power to determine what amount of the capital stock, (not exceeding the maximum mentioned in section thirty-eight of this chapter,) shall be subscribed for, on behalf of such county, and

* The remaining sections of this chapter were introduced in the senate by way of amendment; they are taken from the act of 1847-8, p. 171, ch. 129, § 3 to 7, passed after the chapter was reported by the revisors.

shall enter of record the amount so agreed to be subscribed; and thereupon shall appoint an agent to make the subscription, to be paid in such instalments as may be agreed upon by said court, or as may be called for by said company.

§ 42. For the purpose of paying the quotas on said stock, as they may be called for, or the instalments of such subscriptions as they may fall due, the court, at its June term, shall have power to appoint an agent or agents to negotiate a loan or loans for and in the name of such county; and at the term at which it makes its county levy, shall levy on all the lands in such county without the limits of a town that provides for its poor and keeps its streets in order, such tax, to pay the amount of such subscription, or of such loan or loans as may be authorized and the interest thereon, as said court may deem necessary and proper; and from year to year repeat such assessments until the subscription or loan made by such court, together with all interest, is fully paid. But such levy, for a year, shall not exceed one-fifth of the whole amount of such subscription. ^{1848-9, p 41, ch. 71, § 6.}

§ 43. The right to stock in any company subscribed by any county under the authority of the two preceding sections, shall vest in such county. And the court of the county shall have power from time to time to appoint a proxy to represent the stock in the meetings of the stockholders of the company; and, also, an agent to collect the dividends on its stock, which dividends, when collected, the said court shall annually apply to the diminution of the levy on land in such county. ^{Id. 7.}

Title 19.

WATER COURSES, MILLS, FERRIES, BRIDGES AND TELEGRAPHS.

- CHAP. 62. Of water courses,
63. Of mills.
64. Of ferries and bridges.
65. Of telegraphs.

CHAPTER LXII.

OF WATER COURSES.*

SEC.	SEC.
1. The shores of the bay and sea and beds of rivers ungranted, to remain in common.	2. Subject to right of fishing, &c. rights of riparian owners extend to low water mark.

* As to the title to the bed of a water course, see *Home v. Richards, &c.*, 4 Call, 441; *Hayes' ex'or &c. v. Bowman*, 1 Rand., 417. See also 3 Rand. 33, 6 Rand. 245, 3 Grat. 655.

SEC.

3. Dams, &c. which obstruct navigation and the passage of fish, prohibited,
4. How water course between counties cleared of obstructions.
5. Rights of navigation preserved.

SEC.

6. Limitation on power of courts to grant leave to erect dams.
7. Proviso as to two preceding sections How owner of mill compelled to keep his dam, &c. so as not to obstruct navigation.

10 Hen. Stat. p. 226, ch. 2.
1801-2, p. 10, ch. 7.
1 R. C. p. 323, ch. 86, § 6; p. 341, ch. 87, § 1.

§ 1. All unappropriated lands on the bay of *Chesapeake*, on the sea shore, or on the shores of rivers or creeks, and all the beds of rivers and creeks, which remained ungranted by the former government, and which have been used as a common to all the people of this state, shall continue to be such common according to the acts of May seventeen hundred and eighty, and January eighteen hundred and two; and any of the people of this state may fish, fowl or hunt on the said shores or beds.

Id.

§ 2. Subject to the said right of fishing, fowling and hunting, the limits or bounds of the several tracts of land lying on the sea shore, the said bay and the rivers and creeks thereof, and the rights and privileges of the owners of such lands, shall extend to ordinary low water mark, but no farther, unless where a creek or river, or some part thereof, is comprised within the limits of a lawful survey.

6 Hen Stat. p. 70, ch. 29, § 3, 4, 5.
12 Hen. Stat. p. 189, ch. 82, § 6, 7.
1815-16, p. 67, ch. 46, § 1.
2 R. C. p. 230, ch. 235, § 16, 17, 20, 21.

§ 3. Any dam or other thing in a water course, which obstructs navigation or the passage of fish shall be deemed a nuisance, unless it be to work a mill, manufactory or other machine or engine useful to the public and is allowed by law or order of court. And though a dam may have been so allowed in a water course before the first of January seventeen hundred and eighty-seven, yet if it cause such obstruction it shall not be re-built until leave for that purpose has been obtained under the sixty-third chapter. For every twenty-four hours that a dam or other thing may remain in a water course in violation of this section, the person causing or permitting such violation shall forfeit two dollars, whereof the informer shall have one-half.

Post. p. 328.

6 Hen. Stat. p. 69, ch. 29, § 2.
2 R. C. p. 230, ch. 235, § 18, 19.

§ 4. The court of any county, which is divided by a water course from another county, or through any part of which a water course may pass, may, by itself, or in conjunction with the court or courts of any other county or counties, contract with any person, or order labourers to be hired, to clear such water course of obstructions, in such manner and to such extent as may seem to it proper; and there shall be chargeable on any county, whatever the court thereof may agree to pay for such purpose. But to any proceeding under this section, the forty-second section of the fifty-second chapter shall be applicable in like manner as to a proceeding for keeping in order a road.

Ante, p. 274, ch. 52, § 42.

1820-21, p. 94, ch. 59, 60.
1834-5, p. 140, ch. 125, § 2.
1815-16, p. 68, ch. 46, § 3.

§ 5. Whatever power is reserved to the legislature by any act heretofore passed, to abate or remove any dam or other works in a water course, or improve its navigation, shall continue in full force. And in no case shall the right of the state,

or of any company incorporated for opening, improving or extending the navigation of any water course, to preference in the use of the water flowing therein for the purposes of such navigation, be affected by any order of court which, since the first day of April eighteen hundred and sixteen, has been made, or hereafter may be made, granting leave to any person to erect a dam or other obstruction across or in such water course.

§ 6. Where a water course is navigable, or by law declared a public highway, no court shall grant leave to any person to erect in that part of it any dam which will obstruct ordinary navigation, or the passage of fish. And where any law has been, or shall be enacted for opening, improving or extending the navigation of a water course, no court shall, while such law is in force, grant leave to any person to erect any dam or other obstruction across, or in such water course, which will in any way interfere with the navigation thereof, without the consent of the company incorporated to open, improve or extend such navigation, or the express authority of law. Any such dam shall, notwithstanding it may be built under such leave, be deemed a nuisance, and may be abated as such. Or such company or the state may make a lock or locks in such dam for the passage of vessels and boats, without being required to make any compensation therefor.

§ 7. The two preceding sections shall not be construed to give any greater or other right to any person who has erected or may erect any dam or other obstruction across or in any water course, than such person would have had if the said sections had not been enacted. And where the owner of a mill fails to keep in order his dam, or fails to build or keep in order such locks and sluices as any act of assembly or order of court requires him to build or keep in order at his own cost, and by reason thereof the navigation of the water course is impeded, or injury done to the works of any navigation company, such company, or the attorney for the commonwealth in the county wherein the dam is, may give him notice in writing to do what he is so required to do, or that it will be done by others at his expense. At the end of six months from the time of such notice, the company or the county may have the said work done, and recover the cost thereof from said owner, unless, before such recovery, he surrender to the said company, or to the state, all his right and interest in the said dam.

CHAPTER LXIII.

OF MILLS.

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| <p>SEC.</p> <ol style="list-style-type: none"> 1. How and for what purpose writ applied for. 2. What notice to be given, and to whom. 3. Terms of the writ, to whom directed, and how executed. 4. Jury to be sworn, and what they shall find. 5. Taking inquest may be adjourned. How signed and returned, and proceedings as to party interested who has not had notice. 6. On what return leave not granted to erect dam, &c.; when it may be granted, and on what terms. 7. Rights of applicant on payment of the damages found. | <p>SEC.</p> <ol style="list-style-type: none"> 8. Such leave not to affect vested rights in another pond or works on the water course. 9. Time within which applicant must erect his works or rebuild them, and consequence of his failure. 10. Within what time a tenant for life or years will forfeit his right to such works, if he do not rebuild or repair them. 11. What rights of action or prosecution not barred by inquest or judgment. 12. Grain to be ground in turn. Amount of toll. Penalty for failure. Proviso qualifying previous provisions. |
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Writ of ad quod damnum; inquest under it; and notice to those interested.

2 R. C. p. 225,
ch. 235, § 1, 4, 8.
1821-2, p. 23,
ch. 21, § 1.
1825-6, p. 32,
ch. 29, § 1.
2 Wash. 36.
4 Call 441.
5 Call 444.
3 H. & M. 565.
3 Rand. 33.
2 Grat. 529.

§ 1. A person having, upon lands owned by him on a water course, or proposing to build on such lands, a water mill, or other machine, manufactory or engine, useful to the public, and desiring to erect a dam across, or in such water course, (whether he own the lands on either side of the water course at the point where such dam is to be erected, or not,) or to cut or enlarge a canal through lands above or below, or to raise a dam which may have been erected under an order of court, may apply to the court of the county wherein such mill, machine, manufactory or engine stands, or is proposed to be built, for a writ of *ad quod damnum*.

2 R. C. Id.
1825-6, p. 32,
ch. 29, § 1.
2 Wash. 36.

§ 2. Of such application ten days' previous notice shall be given in the manner prescribed in the seventh section of the fifty-sixth chapter, to each tenant, or the guardian or committee of the tenant, of the freehold of any lands not owned by the applicant upon which it is desired to abut a dam, or through which it is desired to cut or enlarge a canal.

Ante p. 293, ch.
56, § 7.

Id.
1847-8, p. 83,
ch. 109.
2 Wash. 126.
1 Call 495.
4 H. & M. 2.

§ 3. The writ shall be directed to the sheriff of the county in which it is issued; and shall command him to summon and empanel a jury, composed of twelve freeholders of his county, to meet on a certain day, to be specified in the order and writ, at the lands on which the mill, machine, manufactory or engine stands, or is proposed to be built, and the said sheriff may act notwithstanding the said lands may be out of his county. If the writ shall not be executed on the day so specified, it may be executed on such day as the sheriff may from time to time appoint, at least ten days' notice thereof being given to the parties interested.

§ 4. The jury, after being duly sworn by the sheriff, shall enquire and say, if the leave be granted, whether the mansion house of any person, or the out-houses, yard, garden or orchards thereto belonging, will be overflowed or taken; whether and in what degree ordinary navigation and the passage of fish will be obstructed; whether by any, and if any by what, means such obstruction may be prevented; and whether the health of the neighbors will be annoyed by the stagnation of the waters or otherwise. The jury shall also circumscribe as much of the lands, not owned by the applicant, as may be necessary for the canal or dam, not being (beyond what is in the bed of the water course) more than one acre for a dam, nor more than one hundred feet in width for the canal, and shall say what will be a just compensation therefor. And any lands which will probably be overflowed or deprived of water, or otherwise injured by such canal or dam, shall likewise be examined by the jury, who shall say what will be a just compensation to the several owners thereof, for the damage to the same respectively.

2 R. C. p. 226,
ch. 235, § 2.
1825-6, p. 32, § 2.
2 Wash. 126.
1 Munf. 258.
4 Munf. 535.
Gilm. 127.
11 Leigh 532.

§ 5. If the inquest cannot be completed in one day, the sheriff shall adjourn the jury from day to day until its completion. When completed, it shall be signed by the jurors and returned by the sheriff, together with the writ. If by such inquest it appear that any person, to whom notice has not been given, will sustain damage, notice shall be given to him, in the manner prescribed by the second section, to shew cause why the applicant should not have the leave desired.

2 R. C. p. 226, ch.
235, § 3.
1825-6, p. 32, ch.
29, § 3.
4 H. & M. 2.

Judgment on the inquest, and rights under it.

§ 6. If on the inquest, or on other evidence, it shall appear to the court that by granting such leave the mansion house of any person, other than the applicant himself, or the out-houses, yard, garden or orchards thereto belonging, will be overflowed or taken, or that the health of the neighbours will be annoyed, the leave shall not be granted. But if it shall not so appear, the court shall then grant or refuse the leave, as may seem to it proper. If it be granted, the court shall lay the applicant under such terms and conditions as shall seem to it right. It shall, in particular, provide that ordinary navigation and the passage of fish shall not be obstructed, nor the convenient crossing of the water course impeded. And where under such leave an existing mill, manufactory, machine or engine, is to be supplied with water by a canal, the court shall prescribe a time within which the dam, whereby water had before been supplied, shall be abated, which time shall not be more than one year from the completion of the canal. Whenever such leave is granted, the tenant of any land through which any canal may be cut, may cross it with such fencing and bridges, and erect such water gates as he may from time to

2 R. C. p. 227, ch.
235, § 4.
1825-6, p. 33, ch.
29, § 4, 5.
1833-4, p. 96,
ch. 78.
1 Call 329.
4 H. & M. 2.
1 Munf. 258.
1 Rand. 282.
6 Rand. 245.
1 Leigh 1.
10 Leigh 332.
12 Leigh 228.
1 Rob. 468.

2 R. C. p. 227, ch. 235, § 6. time deem necessary, not obstructing the passage of the water to the mill, manufactory, machine or engine.

1825-6, p. 33, ch. 29, § 5, 6. § 7. The applicant, to whom any such leave may be granted, shall, upon paying to the several parties entitled thereto the compensation so ascertained, become seized in fee simple of the land circumscribed by the jury, and be authorized to proceed according to such leave.

1847-8, p. 81, ch. 111.
2 Munf. 534,
6 Munf. 308.
1 Rob. 468.
2 Rob. 253.

§ 8. No person shall, by means of any such leave, draw the water from any mill-pond of another existing at the time of such leave, or do any thing in conflict with any vested right in any water works erected on such water course.

1825-6, p. 34, ch. 29, § 7, 8.
2 R. C. p. 227, ch. 235, § 6.
1825-6, p. 33, ch. 29, § 5, 6.

§ 9. If the applicant shall not begin his work within one year, and so far finish it within three years after such leave, as then to have his mill, manufactory, machine or engine in good condition for use; or if such mill, manufactory, machine or engine be at any time destroyed or rendered unfit for use, and the rebuilding or repair thereof shall not, within two years from the time of such destruction or unfitness, be commenced, and within five years from that time be so far finished as then to be in good condition for use, the title to the land so circumscribed shall revert to the former owner, his heirs or assigns, and the leave so granted shall then be in force no longer, except as follows:

2 R. C. p. 227, ch. 235, § 7.

§ 10. Where any mill, manufactory, machine or engine in possession of (but not erected by) a tenant for life or years, shall be destroyed or become unfit for use, and such tenant shall not, within the said two years, begin, or, within the said five years, finish such rebuilding or repair, the person next entitled in remainder or reversion may enter and rebuild or repair the same within three years from the time of the failure of such tenant, and thereafter hold and enjoy the same with its appurtenances for his use and benefit.

2 R. C. p. 228, ch. 235, § 9.
1825-6, p. 33, ch. 29, § 6.
5 Rand. 691.
4 Leigh 569.

§ 11. No inquest taken under this chapter, nor any judgment thereupon, shall bar any prosecution or action, which could have been maintained if this chapter had not been enacted, unless the prosecution or action be for an injury actually foreseen and estimated upon the inquest.

Miller's toll; and his duty to grind.

2 R. C. p. 228, ch. 235, § 11, 12.

§ 12. At every mill which grinds grain, whether the same be established under an order of court or not, there shall be well and sufficiently ground all grain brought to the mill for the consumption, when ground, of the person bringing or sending it or his family, and in due turn as the same is brought; and there shall not be taken for the toll, more than one eighth part of any grain of which the remaining part is ground into meal, nor more than one sixteenth part of any grain of which the remaining part is ground into hominy or malt. If at any mill there be a violation of this section in any respect, the proprietor thereof shall, for every such violation, forfeit to the

party injured five dollars; but with these provisoes, that the proprietor shall not be obliged to run more than one pair of stones to grind grain brought to his mill for the consumption of the persons bringing or sending it, or their families; and that such proprietor may grind grain for the consumption of his family in preference to that of others.

CHAPTER LXIV.

OF FERRIES AND BRIDGES.

Ferries.

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| <p>SEC.</p> <ol style="list-style-type: none"> 1. Ferries across <i>Chesapeake</i> bay continued. 2. Bond to be required of keepers of such ferry. 3. Proceedings on failure to give such bond. 4. Rates of ferriage at said ferries. 5. Days on which boats leave to be published; boats to be provided; how manned. 6. Provision against ferries from one county interfering with those from another. 7. How special leave may be given to ferry from <i>Accomack</i> or <i>Northampton</i> to <i>Norfolk</i>. 8. Penalty for ferrying there without authority. 9. Ferries across <i>Elizabeth</i> river to be leased out by county court of <i>Norfolk</i>; money how applied. 10. Ferry across <i>Corotoman</i> to be kept, bond required. 11. Ferries at other places may be continued; rates thereof. How ferries discontinued. 12. New ferries, how to be applied for. 13. } Commissioners to be appointed 14. } and report; when ferry may be established. 15. Proceedings if the water course divides two counties. 16. How rates of ferriage may be increased or reduced. 17. No order to establish ferry or changing rates of ferry, &c. until justices have been summoned therefor. 18. For failure of keeper to comply with the law, his privilege may be declared at an end. 19. Privilege to cease when the boats and hands required are not provided. | <p>SEC.</p> <ol style="list-style-type: none"> 20. Court may change its order as to boats and hands. 21. Convenient wharf or landing to be made. Ferry right extends to both sides of the water course. 22. Penalty for transporting persons &c., for reward, when there is a ferry within half a mile. 23. Penalty for similar offence in case of a water course bounding this state. 24. Special provision of same kind as to ferries across <i>Kanawha</i> river in the county of <i>Mason</i>. 25. No court to give leave to establish a ferry within half a mile of another. Penalty for coming across a river within that distance of particular ferries, with or without reward. 26. Qualification of preceding section. |
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Bridges.

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| <ol style="list-style-type: none"> 27. Time within which a toll bridge must be built; if abandoned or not kept in order, privilege to cease. 28. Bridge not to obstruct navigation or fish. 29. How right to demand toll to be ascertained, and rates of toll fixed or changed. 30. Tolls for transporting troops and military stores. |
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Relating both to ferries and bridges.

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| <ol style="list-style-type: none"> 31. Toll may be required in advance. Penalty for exacting more than is lawful. 32. Penalty on keeper for not giving passage in reasonable time. |
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Ferries.

§ 1. Ferries shall continue as heretofore established from the counties of *Accomack* and *Northampton* to the towns of *Norfolk*, *Hampton* and *York*.

2 R. C. p. 241, 2,
ch. 237, § 1.
1829-30, p. 91, ch.
88.

2 R. C. p. 242, ch.
237, § 5.

§ 2. When any obligor in a bond given by a proprietor of any such ferry shall die, or the ownership of the ferry be changed, the court of the county from which such ferry is, may require a new bond to be given by the proprietor for the time being, or by some person for him, in the penalty of five hundred dollars, payable to the county, with one or more sufficient sureties, conditioned that his boats or packets, and their furniture, shall be kept in such order, and so navigated, as in all things to conduce to the comfort and safety of passengers.

Id.

§ 3. If such bond be not given when required, the court shall cause a copy of the order requiring it to be forthwith posted in some public place at or near the ferry, and in case of failure to give the same at the next term after such posting, the proprietor of the ferry shall forfeit to the county fifty dollars, and for every month afterwards that such failure may continue, ten dollars.

See ante, p. 242,
ch. 47, § 12.

2 R. C. p. 241, ch.
237, § 1.
1831-2, p. 50, ch.
63, § 1, 4.
1 38, p. 158, ch.
217, § 1.
1843-4, p. 75, ch.
100.

§ 4. The rates of ferriage at each of the said ferries shall, unless otherwise prescribed by the court of the county from which it is established, be as follows, to wit: For a coach, chariot or wagon, ten dollars, and a two-wheeled chaise or chair, five dollars, for a horse three dollars, for any child under twelve years of age, or any driver or other servant, one dollar and a half; and for any other person three dollars.

2 R. C. p. 241,
ch. 237, § 2.
1831-2, p. 211, ch.
148.
1835-6, p. 236, ch.
161.
1836-7, p. 163, ch.
170.
1838, p. 158, ch.
217, § 2.
1840-41, p. 118,
ch. 111.
1842-3, p. 84, ch.
115.

§ 5. The proprietor of every such ferry shall, by an advertisement in a newspaper in the city of *Norfolk*, designate the hour of two certain days in each week, on which a boat will leave the place from which for each of the places to which, his ferry is established, and the hour of two certain days in each week, on which a boat will leave each of the latter places for the former; and a boat shall be ready and in good order to transport persons, their carriages, horses and servants, over the ferry at the appointed time for the lawful ferriage, and shall transport the same accordingly at such time, unless prevented by the badness of the weather. Every such proprietor shall keep at least two ferry boats, if required by the court of the county from which his ferry is established. Every such boat shall be not less than twenty-five tons burthen, and the captain and one of the hands thereof shall be white men.

2 R. C. p. 240, ch.
237, § 3.
1831-2, p. 50, ch.
63, § 2; p. 211,
ch. 148, § 1.

§ 6. No person, carriage, horse or servant, shall be taken from or landed at any creek, shore or point in the county of *Accomack*, in a ferry boat of a ferry established from the county of *Northampton*; nor from or at any creek, shore or point in the county of *Northampton*, from a ferry boat of a ferry established from the county of *Accomack*, save only that a boat of one ferry may, from stress of weather, enter the harbour of another, and there land any person or thing, or may take any person or thing from such harbour when the ferry-boat belonging thereto shall have been absent, or the captain thereof shall have refused to sail from such harbour for more than twelve hours next before taking the same. The

proprietor of a ferry, by means of whose boat there may be a violation of this section, shall forfeit twenty dollars to each proprietor of a ferry established from the other county.

§ 7. The court of either of the said counties of *Accomack* or *Northampton* may, when it sees fit, grant leave to any person to transport persons or things from a harbour or creek in such county to the city of *Norfolk*, in a vessel of twenty-five tons burthen, subject to all of the preceding provisions, except such as the said court may dispense with. But before such leave is granted, the proprietor of each ferry established from the county shall first be summoned to shew cause against it. 1831-2, p. 212, ch. 118, § 4.

§ 8. Any person, not a proprietor of a ferry lawfully established from one of the said counties and not so licensed, who shall, for any reward or promise thereof, transport any person, his horse or carriage, over the *Chesapeake* bay to *Norfolk*, *Hampton* or *York*, or to any place adjacent to either, shall forfeit twenty dollars to the proprietor of each ferry established from the said counties, except a proprietor whose ferry-boat shall have been absent, or whose captain shall have refused to sail, (from the place from which his ferry is established,) for more than twelve hours before the commencement of such transportation. 2 R. C. p. 241, ch. 237, § 4. 1831-2, p. 211, ch. 148, § 1.

§ 9. The court of *Norfolk* county may lease out the ferries across *Elizabeth* river and the branches thereof, or may cause the same to be kept by an agent appointed by the court. Such lessee or agent shall, if required by the court, give bond to the county with one or more sureties in such sum and with such condition as the court may prescribe. The money received from the ferries mentioned in this section shall be applied towards lessening the county levy. But nothing contained in this section shall interfere with the rights of the city of *Norfolk* under the act entitled an act to authorize a ferry from the city of *Norfolk* to the corporation wharf in the town of *Portsmouth*, passed the twenty-second of March eighteen hundred and thirty-eight. 2 R. C. p. 260, ch. 237, § 22. 1839, p. 113, ch. 155. 1839-40, p. 90, ch. 109.

§ 10. The public free ferry across the *Corotoman* river in the county of *Lancaster*, authorized by the act of the twelfth of March eighteen hundred and forty-seven, shall be established and kept according to the said act, except only that the bond thereby directed shall be to the county of *Lancaster*, instead of to the justices thereof. 1846-7, p. 143, ch. 156.

§ 11. Every ferry established and not discontinued before the commencement of this act may continue to be kept; and the rates of ferriage at every such ferry shall be according to the laws applicable thereto before such commencement, so far as not altered by or under some provision of this chapter. But any such ferry which shall be disused for two years and six months, whereof any part shall be after such commencement, shall by reason of such disuse be *ipso facto* discontinued. 2 R. C. ch. 237, p. 245 to 259, § 8 to 17; p. 260, § 24; p. 261, § 27. 2 Va. Cas. 354.

2 R. C. p. 261, ch.
238, § 1, 2, 3.

2 Va. Cas. 63.

§ 12. A person desiring to establish a ferry across any water course, whether it be a stream bounding the state or not, who owns, or has contracted for the use of, land at the point at which he wishes to establish the same, may, after publishing notice of his intention at the front door of the courthouse on the first day of each of the two next preceding terms, apply to the court of the county or of one of the counties in which he desires to establish such ferry, for leave to establish the same.

2 R. C. p. 261, ch.
238, § 1, 2, 3.

2 Rob. 458.

§ 13. If the place at which the ferry is proposed, be a half mile or more in a direct line from any ferry legally established, the application shall be referred to the commissioners of roads for the county, or to three or more viewers to be appointed by the court, and the said viewers or commissioners shall view the said place, and upon oath report their opinion whether or no public convenience will result from the proposed ferry, with their reasons for such opinion.

2 R. C. p. 259,
ch. 238, § '9; p.
261, § 1, 2, 3.

§ 14. Upon such report, and any other proper evidence, the court may reject the application, or may, unless the water course at such place be the division line between two counties, grant leave to establish said ferry, and prescribe the number of hands and the number and kind of boats to be kept, and the rates of ferriage for persons and things at the same.

Id. p. 262, § 4.

§ 15. If, however, the said water course be such division line, and the court be of opinion that the application ought to be granted, it shall certify to the court of the other county such opinion, with the number of hands and the number and kind of boats, and the rates of ferriage which it deems proper at the same. The applicant may then apply to the court of such other county, after notice therein as prescribed by the twelfth section, and said court, upon the report made to the other court and any other proper evidence, may reject the application, or grant the same on the terms prescribed by the other court.

Id. § 5.
1845-6, p. 75, ch.
106.

§ 16. An order for increasing the rates at any ferry may be made, on the application of the proprietor thereof, after notice of the intended application shall have been published at the front door of the courthouse on the first day of each of the two preceding terms. And an order for reducing the rates at any ferry may be made after the proprietor thereof shall, under an order entered at one term, have been summoned to appear at the next term, to shew cause why such reduction should not be made. Such order either for increasing or reducing may be made by the court of the county which granted leave to keep the ferry, if such ferry be not over a water course which is the division line between two counties. Where the ferry is over a water course which is such division line, the order shall not take effect until it be made by the court of each of the two counties.

2 R. C. p. 263,
§ 11.

§ 17. No order shall be made granting leave to establish a

ferry, or certifying such opinion as to the convenience thereof, or for increasing the rates, unless, under an order made at a previous term, the acting justices of the county shall have been summoned to consider the matter.

§ 18. If the proprietor of any ferry fail in any respect to comply with any section of this chapter, the court of any county from which such ferry is established, may adjudge and declare all his privileges in respect to such ferry at an end, after first causing the said proprietor to be summoned to shew cause against such order. 2 R. C. p. 241, § 2; p. 261, § 25. 1831-2, p. 212, § 4. 1838, p. 158, § 4.

§ 19. If any person to whom leave may be granted to establish a ferry shall not within six months, have at such ferry the number and kind of boats, and the number of hands prescribed by the order granting such leave, he shall not after the said six months, have any rights under the said order. 2 R. C. p. 260, § 24. 11 Leigh 521.

§ 20. The court or courts granting such leave, may from time to time change the order as to the kind of boats and the number of boats or hands. 2 R. C. p. 259, § 19.

§ 21. The proprietor of every ferry shall have a convenient wharf or landing, made so as to be firm and dry. And, where it is not otherwise specially provided, he may ferry over persons or things from the point to which, as well as from the point from which, the ferry is established, and receive therefor the rates established at such ferry. Id. p. 261, § 26, 1830-31, p. 156, ch. 104, § 9.

§ 22. In the case of a water course over which there is a lawfully established ferry, if any person, his horse or carriage, be transported for reward over such water course, within half a mile of any such ferry, the person so transporting the same shall forfeit twenty dollars to the proprietor of such ferry over the said water course, as is nearest to the place of such transportation. 2 R. C. p. 260, § 21.

§ 23. Any person being the owner or occupier, or the agent of the owner or occupier, of a ferry on the shore of another state opposite to, or within two miles of, a ferry established under the laws of this state across the same river, who shall take from the shore of such river within this state, whether for or without reward, any person, horse, carriage, cattle, sheep, hogs or other stock, and carry the same across such river to the shore of such other state, without the consent of the proprietor of the ferry so established under the laws of this state, shall for every such offence forfeit to such proprietor twenty dollars. 1835-6, p. 66, ch. 91, § 1.

§ 24. If the proprietor of a ferry established from one side of the *Kanawha* river in the county of *Mason* shall, by himself or his agent, receive on the other side of the said river within half a mile of a ferry established from such other side, and carry across said river, for or without reward, any person or property liable to ferriage, he shall forfeit to the proprietor of the last mentioned ferry twenty dollars. 1838, p. 162, ch. 222.

§ 25. No court shall grant leave to establish over a water course a ferry within half a mile of any other ferry legally es- 1839-40, p. 58, ch. 72, § 1. '40-1, p. 91, ch. 82.

established over the same water course. If within that distance of a ferry, so established over any water course, any person who had not, before the first day of May eighteen hundred and forty, obtained lawful authority to do so, shall keep a ferry over the same water course, or keep a boat with a hand generally ready to carry any person, horse, carriage, wagon or cart, over the same, and shall actually carry any person or any such thing, whether for reward or not, over the said water course, every person so offending shall, for each month during any part of which the same may have been done, forfeit to the proprietor of the ferry so legally established two hundred dollars. Where any association of persons is formed for the purpose of defeating or evading the provisions of this section, every member of such association shall be subject to the said forfeiture.

11 Leigh 52.

1839-40, p. 58, ch. 72, § 1.

§ 26. The preceding section shall not be construed to prevent a person, not a member of any such association, from going across any water course in his own boat, or taking therein his own property, or the members of his family, or persons in his employment, nor to prevent a merchant or miller, not a member of any such association, from carrying across a water course in his own boat, without reward therefor, any person *bona fide* engaged in the actual transportation, to or from his store or mill, of grain, timber or other produce.

Of bridges.

1840-1, p. 118, ch. 110, § 5, 6.
1846-7, p. 144, ch. 157, § 6, 7.

§ 27. When an act is hereafter passed to authorize the erection of a toll bridge, if the work be not commenced within one year from the passage of such act, or be not completed within two years after such commencement, or, if after its completion, there be an abandonment of the bridge, or a failure for three successive years to keep it in good order; in each of these cases, the privileges granted by the said act shall cease.

Id.

§ 28. Every such bridge shall be so made as not to obstruct the navigation of the water course over which it is erected, nor the passage of fish.

1839, p. 108, ch. 151, § 7.
1840-41, p. 118, ch. 110, § 2.

§ 29. No tolls shall be received for passing any such bridge, until it shall appear to the court of the county wherein the same is, that it is completed according to the act authorizing it. The court shall ascertain whether it is or is not so completed, by appointing three disinterested freeholders to view it. If they report in writing that it is so completed, and their report be confirmed by the court, the person authorized to erect it, his heirs or assigns, may thenceforth demand and receive, on persons and things passing the same, tolls at the rates fixed by such act, or if more be so fixed, then at such rates as may, from time to time, be fixed by the board of public works or by law. Though rates of toll be specified in such act, they may from time to time be changed by law, unless in the said act it be otherwise expressly provided.

§ 30. The tolls on troops or persons in the military or naval service of this state, or of the *United States*, with their arms, munitions and baggage, shall not, in time of war, invasion, or insurrection, exceed on any such bridge one-fourth of the tolls on other persons.

2 R. C. p. 218, § 18.
1836-7, p. 110, § 24.
See ante, p. 220, ch. 61, § 24.

Relating both to ferries and bridges.

§ 31. The proprietor of any ferry or bridge may require the lawful ferriage or toll to be paid previously to a passage over his ferry or bridge. But if there be demanded at any such ferry or bridge more than is lawful, the proprietor thereof shall forfeit to the party aggrieved, so much as is illegally demanded and a further sum of not less than two, nor more than fifteen dollars.

2 R. C. p. 241, ch. 237, § 2; p. 259, § 18.
1839-40, p. 59, ch. 72, § 3.
1840-41, p. 117, ch. 110, § 3.

§ 32. If at any ferry or bridge there be a failure to give any person passage over the same in a reasonable time, the proprietor thereof shall forfeit to such person not less than two, nor more than twenty dollars.*

2 R. C. p. 263, ch. 238, § 7, 8.
1831-2, p. 212, ch. 149.

CHAPTER LXV.

OF TELEGRAPHS.

SEC.

1. Inventors of telegraphs; how entitled to construct them and charge for their use.
2. Right reserved to legislature over telegraph privileges.

SEC.

3. Proprietors of every telegraph to report to board of public works; what report to shew. Penalty for failure to make it.

§ 1. The inventors of any system of telegraph or their assigns, upon producing proof of such invention or assignment to the board of public works, and obtaining its assent, may construct and maintain such telegraph along any of the state or county roads or works, and over the waters of the state, provided the ordinary use of such roads, works and waters, be not thereby obstructed, and along the streets of any town, with the consent of the council or trustees thereof, and upon the land of any incorporated company, with the consent of such company; and may make reasonable charges on messages or intelligence transmitted by such telegraph.

1846-7, p. 79, ch. 52, § 3.

§ 2. The legislature reserves the power of amending, altering or repealing the act passed the twenty-ninth of March eighteen hundred and forty-seven, to facilitate the construction

* The revisors (with references in the margin to 2 R. C. p. 243, ch. 237, § 7; p. 259, 260, § 19, 20; and 1840-41, p. 118, ch. 110,) reported another section (as the last section of this chapter,) which does not appear by the printed amendments to have been struck out, but it was in fact stricken out by the committee on revision; it was by the committee's direction omitted in the engrossed bill, and the roll is like the engrossed bill.

See ante, p. 321,
ch. 61, § 25.

1847-8, p. 167,
ch. 123.

of an electric telegraph on the great northern and southern mail route, or of altering or modifying any rights or privileges acquired under this chapter, or under the twenty-fifth section of the sixty-first chapter.

§ 3. The proprietors of each line of telegraph in this state, shall annually, on or before the first of November, make a report to the board of public works for the year ending the next preceding thirtieth day of September, shewing in such way as the board may prescribe, the amount of capital invested within this state in their line, how much thereof was received by the patentees or inventors, and how much is held by others, the amount per share of the stock, the expense of construction and maintaining the line, the gross and nett profits of such line, and the regulations adopted to ensure the faithful discharge of the duties of the said proprietors. If they fail to make such report, they shall forfeit five hundred dollars; and the like forfeiture shall be incurred for each succeeding month that such failure shall continue.*

Title 20.

BOARD OF PUBLIC WORKS.

CHAP. 66. Of the fund for internal improvement, and the board's general powers; its meetings; subscriptions to joint stock companies, and appointments of proxies and directors.

67. Of the negotiation of loans by the board.

68. Of the payment of instalments on shares subscribed for by the board, and the dividends on such shares.

69. Of the *Cumberland* road.

70. Of roads or other works made on state account.

71. Of agents to superintend the collection of debts to the board; the manner of recovering such debts, and of selling estates taken therefor.

72. Of the oaths of officers receiving money on works in which the state is interested; the annual reports to and by the board; and map of the works.

CHAPTER LXVI.

OF THE FUND FOR INTERNAL IMPROVEMENT,[†] AND THE BOARD'S GENERAL POWERS; ITS MEETINGS; SUBSCRIPTIONS TO JOINT STOCK COMPANIES, AND APPOINTMENTS OF PROXIES AND DIRECTORS.

* In consequence of the act of 1847-8, p. 167, ch. 123, this section was reported by the revisors amongst their amendments, (p. 789, 90, of their reports.) It is not found amongst the *printed* amendments of the committee on revision, though it was, no doubt, adopted; for it is in the bill as engrossed and enrolled.

† This fund was created by an act of the 5th of February 1816, in Sess. Acts 1815-16, p. 35, ch. 17; 2 R. C. p. 201.

SEC.

1. } Who compose the board; board a
2. } corporation; its general powers
3. } and duty.
4. } Moneys of the fund received into
5. } the treasury; how paid out.
6. } Special provision as to money paid
7. } to stockholders of old James ri-
8. } ver company.
9. } Certain funds, &c. from Chesa-
10. } peake and Ohio company, and
11. } James river and Kanawha com-
12. } pany, vested in board.
13. } Who presides over the board.
14. } Called meetings. Place of meet-
15. } ing.
16. } When expenses of members to be
17. } paid.
18. } Proceedings how kept; open to
19. } inspection.
20. } Subscriptions and surveys sus-
21. } pended in certain cases.

SEC.

11. When and how subscription for stock is made in a company.
12. Board to appoint proxy to represent state stock.
13. State proxies in James river and Kanawha company.
14. What duty the proxies may be required to perform.
15. Number of directors on behalf of state to be appointed by board.
16. When to be appointed.
17. When such appointment shall be in force.
18. Term of office of proxies and directors. Temporary appointment of proxy.
19. How provisions of this and other laws may be adopted by companies incorporated before their passage.

Who compose the board; its funds, rights and general powers.

§ 1. The governor, treasurer, two auditors, and register of the land office, shall be a corporation, under the style of the "Board of Public Works," and be vested with all the rights and powers now vested in "the president and directors of the board of public works," or in any corporation composed of officers of government, that has been created for any work of internal improvement of which the state is sole owner.

2 R. C. p. 201, ch. 288, § 1, 2, 3, 4, 5; p. 207, ch. 230, § 5. 1830-31, p. 163, ch. 112, § 1, 4, 5, 6. 1832-3, p. 16, ch. 14, § 1. 1845-6, p. 162, No. 5, 6. 10 Leigh 454.

§ 2. The said board shall be vested with such powers for preserving, improving and disbursing the fund for internal improvement, created by the act passed the fifth day of February eighteen hundred and sixteen, as the general assembly may from time to time prescribe. The unappropriated dividends accruing upon stock belonging to the said fund shall be vested by the board in some productive way until specially applied by law.

§ 3. All moneys belonging to the said fund shall be received into the public treasury upon the warrant of the second auditor. The same shall only be paid out as authorized by the board, unless it be otherwise specially provided.

2 R. C. p. 203, § 10; p. 205, 6, ch. 229, § 1.

§ 4. The dividend to the payment whereof the *James river* and *Kanawha* company is subjected by the twenty-first section of its act of incorporation, shall be received into the treasury like the moneys of the said fund. But the said dividend shall be paid out, upon the warrant of the second auditor, to the respective stockholders of the old *James river* company who may be entitled thereto.

1835-6, p. 69, ch. 95, § 2.

§ 5. All the stock, dividends, income and property, vested in or acquired by the president and directors of the board of public works, under an act passed on the eighth of March eighteen hundred and thirty-four, in relation to stock in the *Chesapeake* and *Ohio* canal company, and under an act passed on the twenty-second of March eighteen hundred and thirty-

1833-4, p. 110, ch. 97, § 1. 1835-5, p. 69, ch. 95, § 1.

six, in relation to stock in the *James* river and *Kanawha* company, shall be vested in the board of public works, subject to the present liabilities, incumbrances and pledges thereof.

Meetings of the board, and the record of its proceedings.

2 R. C. p. 202,
§ 4, 6.
1832-3, p. 16, ch.
14, § 4. § 6. The governor shall be president of the board. When there is a meeting at which the governor is not present, the board may choose a president *pro tempore*.

2 R. C. p. 202,
§ 8, 9; p. 206,
ch. 230, § 1.
1822-3, p. 9, ch. 6.
1824-5, p. 19, ch.
18, § 1.
1832-3, p. 16, ch.
14, § 1, 3. § 7. A meeting of the board may be held at any time upon the call of any member thereof, provided notice of the time for such meeting be given to all the members who may be then at the seat of government. The second auditor's office shall be the place of meeting.

1832-3, p. 16, ch.
14, § 2. § 8. When the board shall send any of its body to examine the condition of any public work, or transact any other business, such reasonable expenses as may be occasioned thereby shall be paid by authority of the board.

2 R. C. p. 203,
§ 15. § 9. A faithful record shall be kept of all the proceedings of the board. The proceedings of each day shall be signed by the person presiding on that day. The said proceedings shall be at all times open to inspection.

Subscriptions and surveys suspended.

1839-40, p. 60, ch.
75. § 10. Such subscriptions, surveys, examinations and locations, to and for works of internal improvement, as were suspended by the act passed the seventeenth of March eighteen hundred and forty, directing the suspension of surveys and subscriptions on the part of the state, shall continue suspended, except so far as may be otherwise provided by law.

When and how subscription for stock is made.

2 R. C. p. 203,
§ 11; p. 207, § 3.
1831-2, p. 71, ch.
81.
1846-7, p. 108, ch.
117, § 2. § 11. When any act shall pass directing the board of public works to subscribe on behalf of the state for a portion of the capital stock of any company, and at least three-fourths of the stock to be subscribed for by others than the state shall have actually been subscribed by solvent persons, the board, on being furnished with an authentic list of the subscribers and the number of shares subscribed by each, and on being satisfied of such solvency, shall from time to time subscribe for as many shares as will be equal to two-thirds of the shares so subscribed by solvent persons, unless the law expressly direct some other proportion, and in such case the board shall subscribe the number of shares so directed.

Of the state proxies and directors.

1833-4, p. 110, ch.
97, § 2; p. 103,
ch. 89. § 12. If a company be not organized before the passage of an act directing the board to subscribe for stock therein, it

shall not be organized until after the board makes a subscription. The board, as soon as it subscribes, and from time to time afterwards, shall appoint one or more proxies to represent the stock held by or on behalf of the state in such company.

§ 13. There shall be three proxies appointed by the board in the *James River* and *Kanawha* company; each of whom shall be entitled to mileage for travel in going to and returning from the meetings of the stockholders, and to four dollars per day for every day's attendance on such meetings. 1833-4, p. 103, ch. 89, § 1.
1841-2, p. 74, ch. 122, § 7.
1842-3, p. 68, ch. 97, § 4.

§ 14. In cases in which it may be desired by the board, its proxies shall cause to be transmitted to it copies of the reports of the president and directors of the companies in which they are proxies, the proceedings of the stockholders thereof, and other documents relating to the works. 1833-4, p. 110, ch. 97, § 2.

§ 15. In every company, to the stock of which the board has subscribed or may subscribe on behalf of the state, the said board shall appoint such portion of the directors as shall bear to the whole number of the directors of such company the same proportion, as nearly as possible, that the stock held on behalf of the state in such company bears to the whole capital stock thereof. 2 R. C. p. 204, § 14.
1831-2, p. 72, ch. 81, § 5.
1846-7, p. 78, ch. 90, § 1.

§ 16. The appointment of directors in a company according to the preceding section shall be made by the board at the time it first subscribes to the capital stock of such company, and afterwards before each annual meeting therein. 1841-2, p. 73, ch. 82, § 7.
1842-3, p. 68, ch. 100, § 4.
1846-7, p. 78, ch. 90, § 2.

§ 17. If at the time of the board's first appointment of directors in any company, the full number of directors for such company shall be in office under an appointment by the stockholders in general meeting, such appointment by the board shall not be in force until the next annual meeting of the stockholders.

§ 18. Proxies and directors duly appointed by the board, shall be in office from the time such appointment is in force until their successors are appointed, unless sooner removed. Where a proxy fails to attend at any meeting, the board may, without removing him, make a temporary appointment, to be in force during his absence. 1833-4, p. 103, ch. 80.
1842-3, p. 68, § 4.

§ 19. If in any company, to the stock of which the said board has heretofore subscribed, a resolution be adopted in a general meeting of the stockholders, (by the vote of a majority of the stockholders other than the state,) assenting to the tenth section of the fifty-seventh chapter and to the fifteenth section of this chapter, the same shall thenceforth be of the same force in respect to such company, that they would be if the former had formed a part of the act incorporating such company, and the latter a part of the act prescribing the conditions on which the subscription was made on behalf of the state to the capital of such company. If such assent be not given, the votes in the meetings of stockholders in such company, and the appointment of directors therein, shall continue to be according to the laws in force on the day before the commencement of this act, Ante, p. 301, ch. 57, § 10.

unless it be a company, whose charter is, by the terms thereof, subject to be altered, amended or modified by the legislature, in which case the said tenth section of the fifty-seventh chapter and the said fifteenth section of this chapter shall be of the same force in respect to it as if such assent had been given.

CHAPTER LXVII.

OF THE NEGOTIATION OF LOANS BY THE BOARD.

<i>When and how loans may be effected.</i>	<i>Provision for paying the debt.</i>
SEC. 1. Rate of interest on loans to board. 2. Loans made in Europe. 3. Any bank in this state may be agent of the board in such loan.	SEC. - rowed, before it is required for the purposes of loan. 9. Stock (and its income) subscribed or purchased, pledged for payment of debt.
<i>Certificates for money borrowed.</i>	10. Income of fund for internal improvement pledged for deficiency. If both insufficient, how interest to be paid.
4. Certificates, when issued on loan in the United States. 5. Certificates when on loan in Europe. 6. Certificates, how payable. 7. What they shall state. 8. What is done with money bor-	11. Surplus of income from stock applied to purchase certificates of the debt and to reimburse the fund for internal improvement.

Where and how loans may be effected.

1838, p. 24, ch. 12,
§ 1, 2, 5.

§ 1. When the board of public works is authorized by law to obtain a loan, the money shall be borrowed at a rate of interest not exceeding six *per centum* per annum.

Id. p. 25, ch. 12,
§ 2, 5.

§ 2. When the money is borrowed in *Europe*, the board may agree to receive from the lenders in *London*, or elsewhere, the money so borrowed, and provide for paying the interest thereon in *London* or elsewhere. And it may do and execute all acts and writings proper to complete the transaction.

Id. p. 26, § 5, 9.

§ 3. Any of the banks incorporated by this state may act as agent of the board in respect to such loan. Whenever money is received from the lenders elsewhere than at the public treasury, it shall be so received only through one of the said banks. The bank through which it is received shall, by bills of exchange or otherwise, cause the money to be paid promptly into the public treasury. The board may allow a reasonable compensation to the bank or any other agent or agents, employed in the matter.

Certificates for money borrowed; what is done with the money.

Id. p. 24, § 2.
1839, p. 9, ch. 8,
§ 1.

§ 4. The treasurer shall, upon the payment into the treasury of money borrowed from any person in the *United States*, issue therefor certificates of debt, payable to such person, his personal representative or assigns.

§ 5. For money proposed to be borrowed in *Europe*, he shall, if the board so direct, issue certificates without such previous payment, and deliver the same according to its order. A blank may be left therein for the name of the person to whom payable, and such name may be inserted when the money is borrowed. But afterwards, every such certificate shall be produced to the second auditor, and the name entered on his books, before any payment shall be made on account either of the principal or interest thereof.

§ 6. The certificates shall be payable either in the currency ^{1d.} of the *United States*, or of any *European* state, as the board may direct, and shall be for such sums, in such form, and with such stipulations, as it may prescribe, not being inconsistent with the law authorizing the loan.

§ 7. Each certificate shall purport that the state of *Virginia* owes a certain sum, with interest thereon at a specified rate, that the interest will be paid semi-annually, and that the principal will be payable so soon after the expiration of twenty years from the date of such certificate as the general assembly of *Virginia* may desire. When the money is borrowed in the *United States*, the certificates shall mention the treasury of the state as the place at which the interest will be paid. When it is borrowed in *Europe*, the certificates shall, as to the place of paying the interest, conform to the agreement.

§ 8. To prevent money borrowed before it is required for the purpose of the loan, from lying idle, the board may deposit the same, or any part thereof, with any bank of this state at an agreed rate of interest; or such part of the said money as any joint stock company will, by law, be entitled to receive at subsequent periods, may be lent to the said company, on such security and conditions as the board may deem expedient.

Provision for paying the debt.

§ 9. For the payment of the interest and the final redemption of the principal of any money so borrowed, the stock of any company subscribed for or purchased with the said money, and the nett income which may accrue therefrom are appropriated and pledged, and the nett income from any works (other than that of joint stock companies) on which the money borrowed is expended, is in like manner appropriated and pledged for the payment of the interest and redemption of the principal of such money; and if such stock and income shall be inadequate to the payment of the interest, and the final redemption of the principal, the general assembly pledges the faith of the state to provide sufficient funds, and for that purpose to levy adequate taxes.

§ 10. Until other sufficient funds shall be provided, so much of the income of the fund for internal improvement, not otherwise specially appropriated, as may be necessary to supply the deficiency, is pledged for such purpose. If at any

time the income arising from any such stock or work, together with the income of the fund for internal improvement, shall be insufficient to pay the interest, the first auditor shall, upon the application of the board of public works, issue his warrant upon the treasury, for the payment of such interest out of any moneys therein not otherwise appropriated. And in case of there not being sufficient money in the treasury to discharge such warrants, the said board shall borrow the necessary amounts from the banks of this state, at a rate of interest not exceeding six *per centum* per annum, on the credit of the state.

1838, p. 24, ch. 12,
§ 4.

§ 11. The surplus income arising from any such stock or work, which may remain after the payment of the interest due upon the certificates issued for money borrowed to pay for such stock, or expend on such work, shall from time to time be applied by the said board to the purchase of such certificates, if to be procured on satisfactory terms; and if not, then of any other certificates of state debt. The same shall be held as a fund for the payment of the interest and redemption of the principal of the money to borrowed, and the interest accruing therefrom shall from time to time be invested and held in like manner. The certificates so purchased on account of any particular loan, or such part thereof as may be necessary, shall from time to time be sold by the said board, to reimburse the fund for internal improvement for all payments of interest made out of the income of that fund on account of such loan. What may not be so sold by the said board, shall, together with the stock so pledged, be disposed of as the general assembly may direct.

CHAPTER LXVIII.

OF THE PAYMENT OF INSTALMENTS ON SHARES SUBSCRIBED FOR BY THE BOARD, AND THE DIVIDENDS ON SUCH SHARES.

SEC.

1. When payments for stock subscribed shall be made.
2. Order in which instalments shall be paid if fund insufficient to pay all.

SEC.

3. Information of dividends made, to be given to auditor. Dividends paid into treasury, when. Penalty on company for failure.

2 R. C. p. 203, ch.
228, § 11; p. 207,
ch. 230, § 3.
1831-2, p. 71, ch.
81, § 1.

§ 1. No payment shall be made, upon any subscription by the board of public works, on behalf of the state, to the stock of any company, until the board shall be furnished with a certificate signed by the treasurer and president of such company, stating that, on the stock subscribed for by others than the state, two dollars per share had been paid; and then the board shall on every share subscribed for on behalf of the

state pay the like sum on the draft therefor of the treasurer, or other authorized agent of the company. The remainder of the amount subscribed by the board shall be paid, on similar drafts, in instalments of the same proportion in which future payments shall have been actually made by stockholders other than the state; of each of which payments a certificate signed as aforesaid, shall be furnished to the board, when it is required to make a similar payment.

§ 2. If the funds applicable thereto prove insufficient to discharge all the instalments of subscriptions made by the board, as such instalments become payable, the said funds shall be applied in paying the instalments of such subscriptions as stand first in point of order, according to the dates of the resolutions of the board making the said subscriptions; and the fund for internal improvement shall not be chargeable with any interest in consequence of the payment of any instalment being suspended.

§ 3. The president and directors of every company, to the stock of which a subscription has been or may be made on behalf of the state, shall, upon declaring any dividend of the profits of such company, cause information thereof to be given to the second auditor. And when the proportions of the private stockholders of such dividend are payable, the proportion of the state shall be paid into the public treasury to the credit of the fund for internal improvement. If sixty days elapse after the time for payment into the treasury without such payment being made, the company shall forfeit a sum not exceeding one hundred dollars.

CHAPTER LXIX.

OF THE CUMBERLAND ROAD.*

SEC.		SEC.	
1.	Board of public works to keep it in repair.	12.	Penalty on collector for detaining persons.
2.	May change site of toll-gate, and sell or purchase land for that purpose.	13.	Collectors to account for tolls.
3.	Superintendent and collector of tolls appointed. Their bonds and compensation.	14.	Superintendent to recover fines; how.
4.		15.	Superintendent to enforce payment from a collector; how.
5.		16.	What constitutes the <i>Cumberland</i> road fund.
6.	Tolls on road. How paid.	17.	Where superintendent to deposit the fund.
7.		18.	Superintendent's duties, under direction of board.
8.	Board may change tolls. Who not to pay toll.	19.	Superintendent to account annually. Proceedings against him.
9.	List of tolls and signs to be put up. Tolls payable before passing; penalty for failure.	20.	
10.			
11.			

* Congress, by an act approved the 2d of March 1833, gave its assent to the act of assembly passed the 7th of February 1832, concerning the *Cumberland* road. See Acts of Congress 1832-3, p. 82, ch. 78.

1831-2, p. 88, ch.
85, § 1.
1845-6, p. 76, ch.
108, § 1.

Ante, p. 297, ch.
56, § 26.

1839, p. 69, ch.
100.

1831-2, p. 88, ch.
85, § 2.
See ante, p. 88,
ch. 13, § 2.

1831-2, p. 88, ch.
85, § 2.
1842-3, p. 64, ch.
94, § 1.
See ante, p. 88,
ch. 13, § 2.

1831-2, p. 89, ch.
85, § 2.

Id. § 3.

Id.

Id.

Id. p. 91, § 3, 5.
1835-6, p. 81, ch.
102, § 1.
1839, p. 69, ch.
100.

§ 1. The *Cumberland* road, so far as it lies within this state, shall continue under the care of the board of public works. The board shall have it preserved in good order, and for this purpose shall have the rights, powers and privileges, which a company incorporated for a work of internal improvement has under the twenty-sixth section of the fifty-sixth chapter.

§ 2. The board may change the location of any toll-gate on the said road, and establish any other, and purchase land for the erection of any toll-house or other buildings, or dispose of any land or buildings contiguous to a former toll-gate, which it may no longer want.

§ 3. The board shall appoint a superintendent of the road, and take from him bond in the penalty of ten thousand dollars. He shall hold his office at its pleasure.

§ 4. A collector of tolls for each toll-gate shall be appointed by the superintendent, and be removed at his pleasure. Every such collector shall give bond, approved by the superintendent. The bonds of the collectors, as well as of the superintendent, shall be filed in the office of the board.

§ 5. The court of *Ohio* county shall allow to the superintendent and collectors a reasonable compensation for their services. The allowance to the former shall not exceed three hundred and thirty-four dollars per annum.

§ 6. The tolls on the said road shall be as established by or under the act of the seventh of February eighteen hundred and thirty-two, until changed by the board.

§ 7. Any one preferring to do so, may pay at one gate the whole toll on the road and obtain from the collector a certificate thereof, which shall enable him to pass through any other gate.

§ 8. The superintendent may commute the tolls with any person, by taking of him a certain sum annually in lieu of the tolls.

§ 9. The said board may change the said tolls, provided they be not reduced or increased below or above a sum necessary to defray the expenses incident to the repair and preservation of said road, and the erection of gates and toll-houses thereon, and for the payment of the compensation to the superintendent and collector, and of such other agents as may be necessarily employed in the preservation and repair of the said road: and provided also, that no tolls be collected from any person passing to or from any public worship, muster, election, court, funeral, mill, school, or to or from his common business on his farm or woodland, or for any wagon or carriage laden with property of the *United States* other than the mail, or any troops or military stores belonging to the *United States* or to any of the states composing the Union, or any person on military duty for the *United States*, or any of the said states.

1831-2, p. 91, § 5. § 10. There shall be set up, at each toll-gate in some conspicuous place, a board on which shall be legibly painted the

tolls payable at such gate, and at convenient places on the road, signs cautioning drivers of carriages or wagons to pass on the left of each other, or otherwise that they will incur a penalty.

§ 11. The twenty-second section of the sixty-first chapter shall apply to the *Cumberland* road as well as to the work of a company, save only that the violation of its provisions is to be made known to the superintendent of the road, and the forfeiture shall be to the board of public works. 2 R. C. p. 18, § 18, 25.
1835-6, p. 81, ch. 102, § 2.
1842-3, p. 64, ch. 94, § 2.
Ante, p. 320, ch. 61, § 22.

§ 12. In case any collector of tolls shall unreasonably detain any person or thing at his toll-gate, or demand or receive more than the lawful toll, he shall forfeit to the party injured five dollars. 1831-2, p. 91, § 6.

§ 13. Every such collector shall account for the tolls which he may have received from time to time, as required by the superintendent, and, after deducting his compensation, pay over what may remain due to the superintendent, who, upon such payment, shall give therefor duplicate receipts to the collector, by whom one of the said receipts shall within a month thereafter be filed in the office of *Ohio* county court. For a failure to comply with this section in any respect, the collector shall forfeit fifty dollars. 1831-2, p. 91, ch. 85, § 2.

§ 14. Any fine imposed by this chapter, as to which no other provision is made, shall be to the board of public works, and the proceeding to recover the same may be according to the first, second and third sections of the forty-third chapter, save only that where it is by warrant before a justice, or by action or motion, it shall be in the name of the said board, and that the superintendent shall institute and prosecute any such proceeding. Id. p. 92, ch. 85, § 8.
See ante, p. 227, ch. 43, § 1, 2, 3.

§ 15. The said superintendent shall also institute and prosecute any proceedings necessary or proper to enforce payment of what may be due from any collector. Such proceeding may be in the name of the said board, either in the county or circuit court of *Ohio* county, and may be by suit or motion against the collector and his sureties, and his and their personal representatives. And the judgment or decree shall be for the principal sum remaining due, with interest thereon, and fifteen *per centum* damages. Id. p. 89, § 2.

§ 16. The superintendent shall receive all money recovered under the two preceding sections, or for any fine incurred to the board of public works under any law relating to the *Cumberland* road. The same, together with the tolls otherwise collected, shall constitute a fund to be denominated the *Cumberland* road fund, and shall be applied exclusively to the preservation, repair and improvement of said road and the expenses incident thereto. Id. § 2, 4.

§ 17. The superintendent, immediately on receiving any such tolls or money, shall deposit the same in the *Northwestern* bank to his credit as superintendent. And he shall only check therefor as he may want the same for repairing, improving or Id. § 2.

preserving said road. Upon the death, resignation or removal from office, or from the state, of any superintendent, all money in bank to his credit as such shall be passed to the credit of his successor in office.

1831-2, p. 89, § 2.

§ 18. The superintendent shall be diligent in the care of said road, shall contract for and direct the application of the labor, materials and other things necessary for repairing, improving or preserving the same, and shall pay for the same out of the said fund. He shall conform to such instructions as the board may from time to time give him.

Id. and 1835-6,
p. 81, ch. 103, § 3

§ 19. Semi-annually he shall render under oath before the county or circuit court of *Ohio* county, or before a commissioner appointed by one of the said courts, an account of all moneys received or expended by him as superintendent, particularly setting forth in such account, when and from whom he shall have received, and when, to whom and on what account, he shall have expended, any such money. A certified copy of such account shall be obtained from the clerk by the superintendent and transmitted by him to the said board.

Id.

§ 20. To enforce payment of what may be due from any superintendent, proceedings may be instituted in the name of the said board, either in the county or circuit court of *Ohio* county, and may be by suit or motion against the superintendent and his sureties, and his and their personal representatives. And the judgment or decree shall be for the principal sum remaining due from the collector, with interest thereon, and fifteen *per centum* damages.

CHAPTER LXX.

OF ROADS OR OTHER WORKS MADE ON STATE ACCOUNT.

SEC.

1. } The board's and superintendent's
2. } duty as to such works. Super-
3. } intendent's oath and compensa-
4. Power of board in obtaining land
5. Plat of land taken to be recorded.
6. } Compensation to owners of land.
7. } As to rights of infants.

SEC.

8. Land so taken may be used for other public works.
9. Board may purchase necessary lands, &c.
10. Board to regulate the tolls and their payment.
11. When to be paid into treasury.
12. Separate account of each state work.

1830-31, p. 153,
ch. 104.
1833-4, p. 105,
ch. 93.
1838, p. 97. ch.
136; cum multis
aliis.

§ 1. When any act shall pass, directing any work of internal improvement to be made on state account, the board of public works shall cause the same to be constructed, and have such bridges erected, over any water courses on the line of the improvement, as may seem to them proper. They shall cause such work to be kept in good repair.

1842-3, p. 66,
ch. 98, § 3.

§ 2. The board may appoint an engineer and a superintendent of any such work. Every such officer before acting shall

take an oath that he will not be interested in any contract for or relating to the work, and give bond approved by the board. See ante, p. 88, ch. 13, § 8.

§ 3. He shall make contracts for the construction of the work, and submit them to the board for its ratification. And he shall superintend the execution of the work, and perform such other duties as the board may prescribe. He shall hold his office at its pleasure, and have assistants, appointed as it may direct. His and their compensation shall be fixed by the board. 1845-6, p. 83, § 5, 8.

§ 4. The board may exercise the same powers, and in like manner, that a company incorporated for a work of internal improvement may exercise under the fourth, fifth and twenty-sixth sections of the fifty-sixth chapter; and upon a confirmation of the report of commissioners under the section last mentioned, persons acting under the board's authority may cut, quarry, dig, take and carry away the wood, stone, gravel or earth for which compensation is allowed, without waiting for the same to be actually paid. 1828-9, p. 47, ch. 71, § 5. Ante, p. 292, 297, ch. 56, § 4, 5, 26.

§ 5. Of the land to be taken for such work, the board shall cause a plat to be returned to the clerk's office of the court of each county wherein any of the said land lies, and there admitted to record, and the said land shall *ipso facto* be vested in the state. Id. p. 46, ch. 71, § 3. 1845-6, p. 82, ch. 111, § 3.

§ 6. Any person claiming compensation for any such land, or any interest therein, may within a year from the time the plat thereof is admitted to record, present a petition to the court of the county, or circuit court of the county, wherein the land lies, setting forth the nature of his right, and praying such compensation; whereupon the commonwealth's attorney in such court shall be summoned to answer the petition; and after one month from the service of such summons, the court shall cause a jury to be empaneled, who shall ascertain what will be a just compensation to the petitioner for his part of the said land, or his interest therein, and for the damage to the residue of the tract, (so far as he has an interest in the same,) beyond the peculiar benefits which he will derive in respect to such residue from the road or work. When a verdict is rendered, (and no new trial granted,) if compensation be allowed, the county wherein the land lies shall be chargeable with the said compensation, and with such costs as the court may adjudge to the petitioner; and if no compensation be allowed, judgment shall be given against the petitioner in favor of the board for their costs. 1828-9, p. 46, ch. 71, § 4. 1845-6, p. 82, ch. 112, § 3. 9 Leigh 313. 3 Grat. 270.

§ 7. An infant on whose behalf no such petition was filed by his guardian within the said year, may present his petition within six months after attaining full age, but not afterwards. All claim on the part of any person to such compensation shall be deemed to be relinquished, unless the said compensation be ascertained upon a petition filed within the periods herein prescribed. Id.

§ 8. Any land (or interest therein) so taken for such work, may be used not only therefor, but also for any other work, of 1845-6, p. 82, ch. 112, § 1.

a different kind, which the general assembly may at a future time direct or authorize.

1841-2, p. 67, ch. 112, § 1.

§ 9. The board may purchase lands for toll-houses, or other necessary buildings and abutments on any work made on state account, or for the location of such work.

1835-6, p. 82, ch. 103, § 2.

1839-40, p. 61, 2,

ch. 77, § 3, 4.

1842-3, p. 67, ch. 98, § 6.

1845-6, p. 80, § 7,

12; p. 91, ch 103,

§ 6.

§ 10. As often as a section of ten miles of any state road shall be completed, the board shall cause a toll-gate to be erected for such section, prescribe the tolls upon persons and things passing the same, or any bridge belonging thereto, and appoint a collector of tolls, who shall hold his place at its pleasure. It may do the same things for a section of less or greater length, if it seem to it fit. It may from time to time change the rates of toll or the location of the toll-gates, establish other gates, and make regulations as to the weight of loads, the passage of persons for a specified time for a sum in gross, and any other matters affecting the road and bridges or the income therefrom. For violations of such regulations, it may prescribe fines not exceeding twenty dollars for any one offence. They shall be to the board, and the proceeding to recover the same may be according to the fourteenth section of the sixty-ninth chapter.

Ante, p. 347, ch. 69, § 14.

1845-6 p. 81, § 8.

§ 11. The nett surplus of the tolls of any work made on state account, after deducting what the board may authorize to be paid thereout for compensation of officers or for repairs, shall be paid into the public treasury at such time or times of each year as the board may direct.

Id. § 9.

§ 12. A separate account shall be kept as to each state work, so as to shew the expenditures thereon and the receipts therefrom.

CHAPTER LXXI.

OF AGENTS TO SUPERINTEND THE COLLECTION OF DEBTS TO THE BOARD; THE MANNER OF RECOVERING SUCH DEBTS AND OF SELLING ESTATES TAKEN THEREFOR.

SEC.

1. Board's remedy by motion or action.

2. Agents to collect appointed.

SEC.

3. } Agent's power and duty in sale and
4. } purchase of property; their com-
5. } pensation.

2 R. C. p. 206, ch. 230, § 2.

1824-5, p. 19, ch. 19.

1830-31, p. 164,

ch. 113.

§ 1. Any forfeiture to the board of public works not under the sixty-ninth or seventieth chapter, and any money which ought to be paid into the public treasury to the credit of the fund for internal improvement, shall be recoverable, with interest on such money from the time the same ought to be paid, by motion after thirty days' notice, or by action, in the general court or in the circuit court of *Henrico*. The second auditor shall institute and prosecute the proceedings, after an

order for such motion or action shall have been made by the board.

§ 2. The said board may appoint agents for the collection of its debts or claims, and authorize them to secure payment thereof on such terms as it may approve. ^{1840-41, p. 91, ch. 83, § 1.}

§ 3. When estate of any person taken under execution, or for sale under any decree or deed of trust, for any such debt or claim, will not sell for the amount thereof, such agent may (under the directions of the board as to the price) purchase such estate for the board. He shall immediately report to it every such purchase and the terms thereof. ^{Id.}

§ 4. The board may sell or appoint an agent to sell, any estate so purchased, who shall sell at such time and on such terms as the board may authorize. It shall take bond from such agent if any money is to come into his hands. Any agent selling land under this section shall, when directed so to do by the board, execute a deed, (with the resolution giving such direction thereto annexed,) conveying to the purchaser all the interest which the board may have in such land. ^{Id. p. 92, § 2.}

§ 5. For the service of any agent under this chapter the board may allow compensation, not exceeding in any case five *per centum* on the money actually paid into the treasury. ^{Id.}

CHAPTER LXXII.

OF THE OATHS OF OFFICERS RECEIVING MONEY ON WORKS IN WHICH THE STATE IS INTERESTED; THE ANNUAL REPORTS TO AND BY THE BOARD; AND MAP OF THE WORKS.

SEC.

1. Oaths of officers receiving money, on state works or company in which state is interested.

2. } Annual reports to board of public
3. } works.

SEC.

4. Annual report of the board and of second auditor, to the general assembly.

5. Maps of works of improvement to be published.

§ 1. The treasurer of every company incorporated for a work of internal improvement, to the stock of which there is a subscription on behalf of the state, and every subordinate officer of any such company who receives any of its money, and every officer who receives tolls upon any work under the care of the board of public works, shall, when he enters on his duties, take an oath that he will faithfully perform those duties. A certificate thereof shall, when the oath is taken by an officer of a company, be filed in its office, and when it is taken by any other officer, be filed in the office of the said board. ^{1842-3, p. 63, ch. 94, § 1.}

§ 2. The president and directors of every such company shall, annually, before the first day of November, make a ^{2 R. C. p. 206, ch. 230, § 2.}

1831-2, p. 72, ch. 81, § 6.
1838, p. 229, Res. No. 2.
1839, p. 206, No. 6, § 2.

report to the said board, for the year ending on the previous first day of October, setting forth the condition of the work, the expenditure for such year, receipts for the same time, and how much from each source of receipt. The report shall be accompanied by a list of the stockholders in the company at the time of making the same, and shall give such other information respecting the affairs under the management of those making it, as the board may, previous to the first day of October, have requested.

1838, p. 92, ch. 130.
1839, p. 206, No. 6, § 2.
1845-6, p. 76, ch. 109.

§ 3. All persons having the management or superintendence of any work of internal improvement made on state account, or of roads undertaken partly on state account and partly by others than the state, (except such of the said roads as have been transferred to the courts of the respective counties through which they pass,) shall annually, before the first day of November, make a report similar to that required by the preceding section so far as the same is applicable.

2 R. C. p. 205, § 15.
1822-3, p. 12, ch. 10, § 1.
1824-5, p. 19, ch. 18, § 2.
1830-31, p. 163, ch. 112, § 3.
No. 2, § 2.
1838, p. 230,
1839, p. 206, No. 6, § 1, 3.
1847-8, p. 354, No. 6, § 1.

§ 4. The said board shall make an annual report to the general assembly, shewing the condition of each work made on state account, or to the stock of which the said board may have subscribed, and giving such other information in relation thereto as it may deem pertinent. The second auditor shall also report to the general assembly, annually, a succinct statement relative to every such work, shewing the amount of capital expended in its construction, the gross amount of the year's income therefrom, the nett balance of such income remaining, after paying current expenses and interest on debts due on account of the work, and what per centage such nett balance is on the capital expended. On or before the first day of November the said reports shall be delivered to the governor, and he shall cause the same to be printed.

1838, p. 229, No. 2, § 1.
1847-8, p. 353, 4, Res. No. 3.
1848-9, p. 253, ch. 344.

§ 5. The said board shall cause to be published every five years, in a cheap and convenient form, a map of all railroads, canals, macadamized and turnpike roads, constructed or in progress in this state, distinguishing each kind of improvement, and, as far as practicable, the condition thereof, and shewing their connection with the principal improvements of neighbouring states. There shall be five hundred copies, which shall be disposed of as the general assembly may direct.*

* Under resolution No. 3, of 1847-8, p. 353. 4, there has been prepared by C. Crozet, Esq., a map and outline of the improvements of the state. A resolution of the 16th of January 1849 directed that out of the 1000 copies thereof which were ordered, there should be forwarded to the clerk of each county and corporation represented in the house of delegates, one copy; to be by the clerks preserved and exhibited for the inspection of the people. See acts of 1848, 9, p. 253, ch. 344; p. 259, no. 5.

Title 21.

MEMORIALS OF WASHINGTON AND LA FAYETTE.

CHAP. 73. Of the donation made by the state to Washington, of stock in public works, and his appropriation thereof to promote education.

74. Of the statue of Washington and bust of La Fayette.

75. Of the remains of Washington and the monument to be erected to his memory.

CHAPTER LXXIII.

OF THE DONATION MADE BY THE STATE TO WASHINGTON OF STOCK IN PUBLIC WORKS, AND HIS APPROPRIATION THEREOF TO PROMOTE EDUCATION.

SEC.

1. Preamble reciting subscriptions made by the state in stock for the benefit of George Washington.

SEC.

2. } How he appropriated the stock.
3. }
4. Stock and its income to be applied as directed by him.

§ 1. It has been the desire of the representatives of this state to embrace every suitable occasion of testifying their sense of the unexampled merits of *George Washington*. It was their wish in particular that those great works for the improvement of his native state, which both as springing from the liberty he had been so instrumental in establishing, and as encouraged by his patronage, would be durable monuments of his glory, might be made monuments also of the gratitude of the state. Hence the general assembly at its session in October seven-
 teen hundred and eighty-four, directed the treasurer, in addition to the subscriptions he was before authorized to make to the respective undertakings for opening the navigation of *Potomac* and *James* rivers, to subscribe for fifty shares in the former and a hundred shares in the latter, which they vested in *George Washington*. In a letter from him, afterwards, the general assembly were told that, when first called to the command of the American forces, he resolved, and since then he had invariably adhered to the resolution to shut his hand against every pecuniary recompense, and he requested that the act, so far as it had for its object his personal emolument, might not have effect; but he mentioned that, if it should please the general assembly to permit him to turn the destination of the fund to objects of a public nature, it would be his study in selecting these to prove the sincerity of his gratitude by preferring such as might appear most subservient to the views of the legislature. The desire of the general assembly to mark by the provision before mentioned their sense of the illustrious merits of *Washington*, at the same time that it was strength-

11 Hen. Stat. p. 525.

12 Hen. Stat. p.
42.

ened by this fresh and endearing proof of his title to the gratitude of his country, was superseded by their respect for his disinterested wishes and patriotic views. Therefore the act of October seventeen hundred and eighty-four was altered as he desired, by an act of October seventeen hundred and eighty-five, which declared that the said shares, with their tolls and profits, should stand appropriated to such objects of a public nature, in such manner and under such distributions as he by deed during his life or by his last will should direct. The general assembly desires to preserve in remembrance these acts and the subsequent appropriations by *Washington*.

1796-7, p. 26.

§ 2. The hundred shares in the *James* river company with their tolls and profits were appropriated by him to the use of *Liberty Hall* academy in the county of *Rockbridge*, and this institution, by an act of the twenty-first of December seventeen hundred and ninety-six, was enlarged and erected into a college by the name of the college of *Washington*.

1831-2, p. 293, ch.
220.

§ 3. The fifty shares in the *Potomac* company were by his will given towards the endowment of a university to be established within the district of *Columbia*, under the auspices of the general government, if that government should incline to extend a fostering hand towards it, and until such seminary was established and the funds arising on these shares should be required for its support, the profit therefrom was to be laid out in bank stock, the dividends whereof were to be vested in more stock, and so on until a sum adequate to the object was obtained. In March eighteen hundred and thirty-two, upon the petition of *Lawrence Lewis*, the surviving executor of *George Washington*, a law was passed empowering him to transfer the said stock and any other stock wherein the dividends thereof had been invested, and any surplus of dividends in his hands, unto such other trustee or trustees as he should select, upon trust to hold the same and receive all dividends and profits thereof, and apply the same to the uses declared by the said will, and further authorizing the said executor, or such trustee or trustees as he should appoint, to subscribe the said fifty shares into the stock of the *Chesapeake* and *Ohio* canal company, and to represent the same at the meetings of the stockholders.

§ 4. The general assembly doth now declare that the stock obtained by such subscription, and the dividends and profits thereof, as well as any stock wherein the dividends and profits of the said fifty shares may have been invested, shall remain a trust fund and be applied to the uses declared by the said will of *George Washington*.

CHAPTER LXXIV.

OF THE STATUE OF WASHINGTON AND BUST OF LA FAYETTE.

SEC.

1. Statue of *Washington*; to remain in the capitol.
2. Bust of *La Fayette*. Inscription to be made thereon.

SEC.

3. Duty of superintendent of public buildings in respect to them.

§ 1. The marble statue of *Washington*,* procured under a resolution of the general assembly, adopted in June seventeen hundred and eighty-four, shall remain in the capitol, with the following inscription on its pedestal: 11 Hen. Stat. p. 552.

“The general assembly of the commonwealth of *Virginia* have caused this statue to be erected as a monument of affection and gratitude to *George Washington*, who, uniting to the endowments of the hero the virtues of the patriot, and contributing both in establishing the liberties of his country, has rendered his name dear to his fellow-citizens, and given to the world an immortal example of true glory. Done in the year of Christ seventeen hundred and eighty-eight, and in the twelfth year of the commonwealth.”

§ 2. It was resolved by the general assembly on the seventeenth of December seventeen hundred and eighty-one, that a marble bust of the Marquis de *La Fayette* should be made in *Paris*, with the following inscription: “This bust was voted on the seventeenth day of December seventeen hundred and eighty-one, by the general assembly of the state of *Virginia*, to the honour of the Marquis de *La Fayette*, (major-general in the service of the *United States of America*, and late commander-in-chief of the army of the *United States in Virginia*,) as a lasting monument of his memory and their gratitude.” 11. p. 553.
Afterwards, in December seventeen hundred and eighty-four, the general assembly resolved that the governor should cause the said bust to be presented, in the name of the commonwealth, to the city of *Paris*, with a request that the same might be accepted and preserved in some public place of that city, and also further resolved that, as a further mark of the lasting esteem of this commonwealth for the illustrious qualities and services of the Marquis de *La Fayette*, another bust of him, with a similar inscription, should be procured and fixed at the seat of government. Such bust having long since been procured and fixed in the capitol, near to the statue of *Washington*, the general assembly doth now direct that the words before mentioned be inscribed thereon.†

* By *Houdon*. See *Jefferson's Works*, vol. 1, p. 232, 247 to 249, 253, 393. *Sparks's Washington*, vol. 9, p. 131 to 133, 138, 144, 185.

† In October 1785, an act passed, which, after reciting that “the Marquis de *La Fayette* is eminently distinguished, by early and signal exertions in defence of American liberty,” that “this illustrious nobleman continues to afford testimonies of unceasing affection to this state;” and that the general assembly is “solicitous to bestow the most decisive mark of regard which a republic can give,” enacts “that the Marquis de *La Fayette* be henceforth deemed and considered a citizen of this state, and that he shall enjoy all the rights, privileges and immunities thereunto belonging.” 12 Hen. Stat., p. 30, ch. 5.

§ 3. The superintendent of public buildings shall see that the said statue and bust are kept cleanly, and that the inscriptions thereon are always perfectly legible.

CHAPTER LXXV.

OF THE REMAINS OF WASHINGTON, AND THE MONUMENT TO BE ERECTED TO HIS MEMORY.*

SEC.

1. Resolutions for keeping the remains of *Washington* in *Virginia*.
2. *Washington* monument fund.
3. Provision for increase of the fund.
4. How fund to be invested and preserved, until wanted.

SEC.

5. Governor to cause monument to be built on the capitol square.
6. Commissioners to superintend structure. Appropriation for monument out of the treasury.

§ 15-16, p. 263.

§ 1. The general assembly, by resolutions unanimously agreed to on the sixteenth of February eighteen hundred and sixteen, requested, in the name of the state, that the remains of her beloved son *George Washington* might be removed from the family vault at *Mount Vernon*, and interred near the capitol of *Virginia*, beneath a monument to be erected at the public expense, and to serve as a memorial to future ages of the love of a grateful people; and it not being thought proper to separate the remains of the illustrious deceased from those of his amiable and excellent wife, then lying interred in the same vault, permission was requested to remove also the remains of *Mrs. Washington* and to inter them with those of her husband under the same monument. The general assembly could not,

* The chapters under this title were reported by the revisors in March 1848. At the ensuing session of the general assembly, a committee of the *Virginia Historical society* (acting under a resolution of the society, adopted in December 1848,) having brought the subject before the assembly, an act was passed on the 22d of February 1849, providing for the erection of the monument. Sess. Acts 1848-9, p. 11, ch. 9. The revisors being required to bring this act within the scope of their revision (1846-7, p. 21, ch. 25, § 1,) the differences between it and chapter 75, as previously reported, were, by the revisor who had drawn that chapter, pointed out to the joint committee on revision; and the committee approved, and the legislature passed, the chapter as now printed in this Code.

The chief differences between the act of February 22, 1849, and this chapter are these: 1. That act, though it provided for a nominal appointment of commissioners, placed them under the direction and control of the executive, and authorized the executive to cause the structure of the monument to be commenced; whereas, to increase the security that the monument shall be upon a good model, this chapter requires that it shall be upon such plan as the governor and a majority of the council may concur in thinking suitable and proper. 2. That act speaks of a "contract for its proper construction;" whereas, in this chapter, all mention of a contract was intentionally omitted, it not being thought probable that the object ought to be effected in that way: it was deemed sufficient and best, in addition to requiring the governor to cause the monument to be erected upon such plan as aforesaid, simply to direct him to appoint one or more commissioners to superintend the structure. 3. That act directed loans to individuals out of the fund to be called for and recovered as soon as practicable, and stocks and other funds to be converted into money; whereas this chapter contemplates that the fund shall continue to be invested and producing interest, and only be converted into money from time to time as there may be occasion therefor.

however, attain its wish in regard to the remains of either, and acquiesced in this result, because a desire had been expressed in the will of *Washington* that a new vault should be built at *Mount Vernon* and his remains deposited therein with those of deceased relations (then in the old vault), and such others of his family as should choose to be entombed there. Efforts were afterwards made by the congress of the *United States* which the general assembly viewed with anxious solicitude. The fact that *Virginia* had been the birth-place of the best and most illustrious man that ever lived, was naturally calculated to inspire her citizens with a strong desire to keep his remains enshrined in the land of his nativity; and this desire was increased by the consideration that the burial ground was designated by the dying patriot himself. The general assembly, therefore, by resolutions unanimously adopted on the twentieth of February eighteen and thirty-two, earnestly requested the proprietor, in the name of the people of this state, not to consent to the removal of the remains of *Washington* from *Mount Vernon*; and there they continue still.

1831-2, p. 307,
No. 1.

§ 2. The general assembly, however, on the twenty-second of February eighteen hundred and seventeen, requested the executive to adopt means to give effect to so much of the resolutions of February eighteen hundred and sixteen, for the erection of a monument to *Washington*, as were yet attainable. And under this and a subsequent resolution of the nineteenth of February eighteen hundred and eighteen, voluntary donations towards defraying the expense of the monument were made to a considerable amount, and paid into the public treasury. These donations, restricted by a provision in the resolutions of eighteen hundred and sixteen, that no individual should be allowed to subscribe in his own name more than twenty dollars, were not of themselves sufficient to effect the object; and the money remained for some years in the treasury of the state unproductive, but always distinguishable as "the *Washington* monument fund." Desirous of making this fund sufficient to effect the object of the donors, the general assembly, on the twenty-second of February eighteen hundred and twenty-eight, passed a law directing the money to be invested at an interest to be paid semi-annually, and directing such interest to be re-invested. And under this law, the fund which, at the time of the first investment, amounted only to thirteen thousand and sixty-three dollars and ten cents, had increased, on the first day of October eighteen hundred and forty-eight, to forty-one thousand seven hundred and sixty-three dollars and fifty-one cents.

1816-17, p. 201,
No. 3.
1817-18, p. 225.

1827-8, p. 11, ch.
12.

§ 3. In order that the said fund may be further increased, the governor shall appoint commissioners for such parts of the state as he may deem proper, to receive further donations towards the monument. The commissioners shall pay into the treasury the amount of such donations, and return to the governor lists of the names of the subscribers, with their

1848-9, p. 13, ch.
9, § 2.

places of abode and the sums subscribed by them, which lists, with the lists of those who have heretofore subscribed, and names of the commissioners, the governor shall cause to be copied in a book. And such book, together with suitable records of the age, shall, when the monument is erected, be deposited in the least destructible part thereof.

1848-9, p. 13, ch.
9, § 3; and ch.
10, § 1.

§ 4. The treasurer shall invest in his name, for the use of the *Washington* monument fund, in certificates of debt of or guaranteed by the state, bearing an interest at the rate of six *per centum* per annum, payable semi-annually, all the profits of the said fund, from time to time as they arise, all such donations from time to time as paid into the treasury, and any part of the said fund, now loaned out, whenever the same may be collected or paid under the authority of the governor. Any certificates or securities for money belonging to the said fund, shall be kept by the treasurer in one of the banks in which the revenue of the state is deposited.

1847-8, p. 12, ch.
9, § 1, 3.

§ 5. The governor, after procuring a suitable model, shall cause the monument to be erected on the capitol square in the city of *Richmond*, upon such plan as he and a majority of the council may concur in thinking suitable and proper.

Id. § 3, 4.

§ 6. The governor shall appoint one or more commissioners to superintend the structure. Payments on account thereof shall be made, upon the order of the governor, out of the monument fund, for which purpose the same shall be converted by the treasurer into money from time to time, as there may be occasion therefor. If the said fund and donations be insufficient to complete the structure, there shall be paid out of the treasury, on the governor's order, so much as may be necessary for its completion, not exceeding, with the said fund and donations, one hundred thousand dollars.

Title 22.

RELIGION; AND BENEVOLENT ASSOCIATIONS.

CHAP. 76. Of religious freedom.

77. Of church property, and benevolent associations.

CHAPTER LXXVI.

OF RELIGIOUS FREEDOM.

SEC.

1. Act of religious freedom, recited.

SEC.

2. Rights asserted therein, reaffirmed.

12 Hen. Stat. p.

84.

1 R. C. p. 77, ch.
31.

§ 1. The general assembly, on the sixteenth day of December seventeen hundred and eighty-five, passed an act in the words following, to wit:

"An act for establishing religious freedom."*

"Whereas Almighty God hath created the mind free; that all attempts to influence it by temporal punishment, or burthens, or by civil incapacitations, tend only to beget habits of hypocrisy and meanness, and are a departure from the plan of the Holy Author of our religion, who, being Lord both of body and mind, yet chose not to propagate it by coercions on either, as was in his Almighty power to do; that the impious presumption of legislators and rulers, civil as well as ecclesiastical, who, being themselves but fallible and uninspired men, have assumed dominion over the faith of others, setting up their own opinions and modes of thinking as the only true and infallible, and as such, endeavoring to impose them on others, have established and maintained false religions over the greatest part of the world, and through all time; that to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves, is sinful and tyrannical; and even the forcing him to support this or that teacher of his own religious persuasion, is depriving him of the comfortable liberty of giving his contributions to the particular pastor whose morals he would make his pattern, and whose powers he feels most persuasive to righteousness, and is withdrawing from the ministry those temporary rewards which, proceeding from an approbation of their personal conduct, are an additional incitement to earnest and unremitting labours for the instruction of mankind; that our civil rights have no dependence on our religious opinions any more than our opinions in physics or geometry; that therefore the proscribing any citizen as unworthy the public confidence by laying upon him an incapacity of being called to offices of trust and emolument, unless he profess or renounce this or that religious opinion, is depriving him injuriously of those privileges and advantages to which, in common with his fellow-citizens, he has a natural right; that it tends only to corrupt the principles of that religion it is meant to encourage, by bribing, with a monopoly of worldly honours and emoluments, those who will externally profess and conform to it; that though, indeed, those are criminal who do not withstand such temptation, yet, neither are those innocent who lay the bait in their way; that to suffer the civil magistrate to intrude his powers into the field of opinion, and to restrain the profession or propagation of principles on supposition of their ill tendency, is a dangerous fallacy, which at once destroys all religious liberty, because he, being of course judge of that tendency, will make his opinions the rule of judgment, and approve or condemn the sentiments of others only as they shall square with or differ from his own; that it is time enough for the rightful purposes of civil government, for its

* Drawn by Mr. Jefferson; but passed (he states,) "with some mutilations in the preamble." See *Jefferson's Works*, vol. 1, p. 36, 7.

officers to interfere, when principles break out into overt acts against peace and good order; and finally, that truth is great and will prevail, if left to herself, that she is the proper and sufficient antagonist to error, and has nothing to fear from the conflict, unless by human interposition disarmed of her natural weapons, free argument and debate; errors ceasing to be dangerous when it is permitted freely to contradict them:

“Be it enacted by the general assembly, that no man shall be compelled to frequent or support any religious worship, place or ministry whatsoever, nor shall be enforced, restrained, molested or burthened, in his body or goods, nor shall otherwise suffer on account of his religious opinions or belief; but that all men shall be free to profess, and by argument to maintain, their opinions in matters of religion, and that the same shall in no wise diminish, enlarge or affect their civil capacities.

“And though we well know that this assembly, elected by the people for the ordinary purposes of legislation only, have no power to restrain the acts of succeeding assemblies constituted with powers equal to our own, and that, therefore, to declare this act to be irrevocable, would be of no effect in law; yet we are free to declare, and do declare that the rights hereby asserted are of the natural rights of mankind; and that if any act shall be hereafter passed to repeal the present, or to narrow its operation, such act will be an infringement of natural right.”

§ 2. The general assembly doth now again declare that the rights asserted in the said act are of the natural rights of mankind.

CHAPTER LXXVII.

OF CHURCH PROPERTY AND BENEVOLENT ASSOCIATIONS.

SEC.	SEC.
1. } Overseers of the poor to sell glebe	9. How trustees appointed to effect
2. } lands.	the purposes of such convey-
3. May recover them by suit, and	ance, &c.
their profits.	10. Books or furniture belonging to a
4. Limitation on their power.	church, how held.
5. They may be compelled to exe-	11. } Suits by and against trustees as to
cute this law.	12. } such property. Limitation of
6. How glebe and church property	13. } the quantity of land.
appropriated.	14. Conveyances to benevolent asso-
7. Provision as to donation to a ves-	ciations, of land. Subject to
try, for charitable purposes.	sections relating to church pro-
8. What conveyances &c., for reli-	erty.
gious purposes, valid.	15. Limitation of the quantity of land
	to be held for such associations.

Appropriation of the property held by the episcopal church before the Revolution.

ch. 5. § 1. All the laws relative to the former protestant episcopal
9, ch. church having been repealed by the act of the twenty-fourth

day of January seventeen hundred and ninety-nine,* and the principle having been recognized by the act of the twelfth day of January eighteen hundred and two, that the property formerly belonging to the said church devolved on the people (upon the dissolution of the British government here) in the same degree in which the right and interest of the said church was derived therein from them; it is now, according to the said act of the twelfth of January eighteen hundred and two, declared as follows:

§ 2. The overseers† of the county wherein there lies the greater part of any tract of glebe land that is mentioned in the said act, shall, if the same be vacant, or shall become so by the death or removal of any incumbent, enter thereon unless some person be in possession thereof, under a lease made on behalf of the said church prior to the said act, and in the latter case shall enter thereon so soon as the lease shall expire, and upon any such entry, shall sell on the premises to the highest bidder, on twelve months' credit, such tract of land, and all other property incident thereto, except so much thereof as may be kept in kind as a place of general reception for the poor of the county or otherwise for the use of such poor, and, on receiving bond with good security for the amount of the purchase money, payable to the said overseers, shall convey the property sold to the purchasers thereof.

1 R. C. p. 79, ch. 32.
1819-20, p. 78, ch. 90.
2 Munf. 513.
9 Leigh 580.

§ 3. The said overseers may, by suit in their names, recover any land upon which they are directed so to enter, and the property incident thereto, and the profits of any such land or property of which any person other than an incumbent or his tenant shall have had possession, and for the profits of which such person shall not have accounted; also all that may be due on any such lease; and whatever else any person may

1 R. C. p. 79, ch. 32.
1811-12, p. 100, ch. 65.
1813-14, p. 130, ch. 65; p. 137, ch. 78.
2 R. C. p. 270, § 23.

* In 1776 an act passed for exempting the different societies of dissenters from contributing to the support of the church and its ministers. Hen. Stat. vol. 9, p. 164, ch. 2. Former acts, providing salaries for the ministers, which had been suspended from time to time, (see Hen. Stat. vol. 9, p. 312, ch. 16; p. 387, ch. 13; p. 469, ch. 18; p. 578, ch. 38; vol. 10, p. 111,) were in 1779 repealed. Id. vol. 10, p. 197, ch. 36. As to this repealing act, and the previous laws, see *Jefferson's Works*, vol. 1, p. 31, 2. In 1784 an act passed for incorporating the Protestant Episcopal church. Hen. Stat. vol. 11, p. 532. Then in 1785 there was an act to authorize the election of certain vestries, 12 Hen. Stat. p. 93, ch. 37. In 1786 the act for incorporating the church was repealed. Id. p. 266, ch. 12. And in 1788, there was an act giving certain powers to the trustees of the property of the church. Id. p. 705, ch. 47. The act of the 24th of January 1799, after reciting that these several laws of 1776, 1779, 1784, 1785, 1786 and 1788, "do admit the church established under the regal government, to have continued so, subsequently to the constitution; have bestowed property upon that church; have asserted a legislative right to establish any religious sect, and have incorporated religious sects, all of which is inconsistent with the principles of the constitution and of religious freedom and manifestly tends to the establishment of a national church," repealed those laws and declared them to be void. For the judicial decisions as to the constitutionality of the act of 1799 and that of 1802, see *Turpin, &c. v. Lockett, &c.*, 6 Call, 113, and *Selden &c. v. the overseers of the poor*, 11 Leigh 127.

† See ante, p. 258, ch. 51, of the poor; the overseers (whose appointment is thereby provided for) are designated therein as the overseers of the county or town; but in that chapter, under the last section thereof, the word *overseers* is construed as if followed immediately by the words "of the poor."

have received for the use of the said church as established under the former government, and shall not have paid.

1 R. C. p. 81, ch.
32.

§ 4. The said overseers shall have no power under the two preceding sections over any church, or the property therein, or any churchyard, nor over any private donations for church or other purposes where any person in being is entitled to take the same under any private donor.

1 R. C. p. 79, ch.
32.

2 R. C. p. 278,
§ 49.

§ 5. In any case in which the said overseers ought to act under the preceding sections, the court of their county may order them to act. If for three months from such order, there be a failure to act according thereto, every person so failing shall forfeit to the county two hundred dollars.

1 R. C. p. 81, ch.
32; p. 89, ch. 33,
§ 18.

§ 6. The glebe lands and church property, or the proceeds thereof, held by the overseers of any county under the said act of the twelfth of January eighteen hundred and two, or under this or any other act, which may not have been applied to some particular object under a local statute passed for the purpose, shall be appropriated to such object or objects, (other than for a religious purpose,) as may be voted for in such county, (at such time and place as the county court may prescribe,) by a majority of the persons entitled to vote in the county for a delegate therefrom to the general assembly, and, if no such object be so voted for, shall remain vested in the said overseers and be appropriated by them for the benefit of the poor of such county.

Provision as to donations.

1805-6, p. 43, ch.
74, § 1, 2.

2 R. C. p. 263, § 12,

Gilm. 336.

§ 7. Where, previous to the thirtieth of January eighteen hundred and six, any donation was made of money or any other thing, for a charitable purpose, and the donation was to be controlled or managed by a vestry, the overseers of the poor of the county or town in which the said charity was intended by the donor to be exercised, shall exercise the same powers and perform the same duties respecting the said donation that could or ought to have been exercised and performed by the vestry if it had continued to exist and been a corporate body, and shall apply such money or other thing in such manner as may have been directed by the donor.

Property acquired by a church since the Revolution.

1841-2, p. 63, ch.
102.

§ 8. Every conveyance, devise or dedication, shall be valid, which since the first day of January, seventeen hundred and seventy-seven, has been made, and every conveyance shall be valid which hereafter shall be made, of land for the use or benefit of any religious congregation as a place for public worship or as a burial-place or a residence for a minister; and the land shall be held for such use or benefit, and for such purpose and not otherwise.

id.

§ 9. The circuit court of the county or corporation wherein

there may be any parcel of such land or the greater part thereof, may on application of the proper authorities of such congregation, from time to time, appoint trustees either where there were or are none, or in place of former trustees, and change those so appointed, whenever it may seem to the court proper, to effect or promote the purpose of the conveyance, devise or dedication; and the legal title to such land shall for that purpose be vested in the said trustees for the time being and their successors.

§ 10. When books or furniture shall be given or acquired for the benefit of such congregation, to be used on the said land in the ceremonies of public worship, or at the residence of their minister, the same shall stand vested in the trustees having the legal title to the land, to be held by them as the land is held, for the benefit of the congregation. ^{1841-2, p. 60, ch. 102.}

§ 11. The said trustees may, in their own names, sue for and recover such land or property, and be sued in relation thereto. Such suit, notwithstanding the death of any of the said trustees or the appointment of others, shall proceed in the names of the trustees by or against whom it was instituted.

§ 12. Such trustees shall not take or hold at any one time more than two acres of land in an incorporated town, nor more than thirty acres out of such a town.

§ 13. Any one or more of the members of any religious congregation may, in his or their names on behalf of such congregation, commence and prosecute a suit in equity against any such trustee, to compel him to apply such land or property for the use or benefit of the congregation, as his duty shall require. No member of the congregation need be made a defendant to such suit, but, in other respects, the same shall be proceeded in, heard and determined as other suits in equity, except that it may be proceeded in, notwithstanding the death of the plaintiff, as if he were still living. ^{1846-7, p. 66, ch. 76.}

Benevolent associations.

§ 14. When any conveyance of land has been or shall be made to trustees for the use of any society of free masons, odd fellows, sons of temperance, or any other benevolent association, or if without the intervention of trustees such conveyance has been made since the thirty-first day of March, eighteen hundred and forty-eight, or shall be hereafter made for such use, the ninth, eleventh and thirteenth sections of this chapter shall be construed as if they were expressly made applicable to such association. ^{1847-8, p. 80, ch. 105, § 1.}

§ 15. The trustees for the use of any such association shall not hereafter take or hold, at one time, any land exceeding two acres, nor for any other use than as a place of meeting for such association, and for the education and maintenance of children charitably provided for by them. ^{1847-8, p. 80, ch. 105, § 2.}

Title 23.

EDUCATION.

- CHAP. 78. Of the board of the Literary fund; and the duties and powers of the second auditor in relation thereto.
79. Of what the fund consists, and how it is appropriated.
80. Of funds for education, from glebe lands and church property; and from gifts, grants, devises and bequests.
81. Of schools for indigent children.
82. Of free schools.
83. Of the University of Virginia; and of colleges and academies.
84. Of the institution for educating the deaf and dumb and the blind.

CHAPTER LXXVIII.

OF THE BOARD OF THE LITERARY FUND; AND THE DUTIES AND POWERS OF THE SECOND AUDITOR IN RELATION THERETO.

SEC.		SEC.	
1.	Who compose the board; its meetings and proceedings; copy of proceedings evidence.	7.	To make annual report to board.
2.		8.	To furnish school commissioners, &c., a copy of his report and printed forms, &c.
3.	Money due the fund; how recoverable; sections of 71st chapter applicable to this.	9.	All money of the fund to be received in the treasury, and paid out upon second auditor's warrant.
4.	How the funds invested.	10.	He to negotiate contracts, draw writings and settle accounts of agents.
5.	Second auditor to be accountant and exercise any of the powers of the board; exception to his powers.	11.	Securities belonging to fund to be kept, and a list reported by him.
6.			

Who compose the board; its general powers.

- 1 R. C. p. 83, ch. 33, § 6.
1819-20, p. 13, ch. 12, § 1.
1820-1, p. 12, ch. 10, § 1, 2, 8 to 13; p. 13, ch. 12.
1823-9, p. 16, ch. 14, § 13.
1845-6, p. 108, No. 6.
Ante, p. 340, ch. 66, § 6 to 9.
Id.
1832-3, p. 16, ch. 14.
1820-21, p. 14, ch. 10, § 9.
- § 1. The governor, treasurer, two auditors and register of the land office, shall be a corporation under the style of "The Board of the Literary Fund," and be vested with all the rights and powers now vested in the president and directors of the literary fund.
- § 2, To the meetings of the said board and their proceedings, the sixth, seventh, eighth and ninth sections of the sixty-sixth chapter shall be applicable. A copy of such proceedings, or any part thereof, certified by the secretary of the board, shall be evidence in all cases in which the original would be.
- § 3. Any money which ought to be paid into the public treasury, to the credit of the literary fund, shall (unless other provision be made therefor) be recoverable, with interest, in the manner prescribed by the first section of the seventy-first chapter, for the recovery of money to be paid to the credit of the fund for internal improvement. And the second, third, fourth and fifth sections of that chapter shall apply also to the board mentioned in this chapter.
- 1 R. C. p. 83, ch. 33, § 6, 7.
1820-21, p. 13, ch. 10, § 5.
2 R. C. p. 61, ch. 191, § 12.
1845-6, p. 27, ch. 36.
Ante, p. 350, ch. 71, § 1, 2, 3, 4, 5.

§ 4. The said board shall, from time to time, invest all the unappropriated capital and income of the literary fund in certificates of debt of the *United States*, or certificates of debt of, or guaranteed by, this state, or in stocks of banks incorporated by it. And the said board may call in any such investment, or any heretofore made, and reinvest the same as aforesaid, whenever deemed proper for the preservation, security, or improvement of the said fund.

1 R. C. p. 84, § 9.
1825-6, p. 8, ch. 6;
p. 26, ch. 25, § 3.
1827-8, p. 7, ch. 4,
§ 4.
1831-2, p. 13, ch.
13.
1843-4, p. 23, ch.
29, 30.
1844-5, p. 18, ch.
21, 22.
1845-6, p. 28, ch.
37.
1846-7, p. 21, ch.
26.

Duties and powers of the second auditor as to the fund.

§ 5. The second auditor shall be the accountant of the literary fund.

1822-3, p. 50, ch.
45, § 2.

§ 6. He shall, subject to the control of the board, exercise any of their powers, except that he shall not, without their special authority entered on the journal of their proceedings, dispose of any of the money or property belonging to the literary fund.

1 R. C. p. 84, ch.
33, § 6.
1828-9, p. 16, ch.
14, § 13.

§ 7. He shall annually, on or before the first day of November, deliver to the governor, to be laid before the general assembly, a report made up to the thirtieth of September next preceding, of the condition of the literary fund, with an abstract of the accounts thereof in his office, and such information as to its application to the purposes of education, and the results thereof, as he may deem proper and likely to be useful.

1 R. C. p. 84, ch.
33, § 6.
1846-7, p. 241, No.
19.
1820-21, p. 43, ch.
10, § 11.
1847-8, p. 354,
No. 6.

§ 8. He shall furnish to each board of school commissioners a copy of his said report, and also furnish to the school commissioners, superintendents, and teachers, appointed by virtue of any section of the eighty-first or eighty-second chapter, with printed forms for their accounts, statements, and other reports, and accompany the same with explanations and instructions in relation to their duties. When any change is made in the apportionment of the fund among the counties and corporations, he shall give notice thereof to the said commissioners.

1828-9, p. 16, ch.
14, § 13.
1831-2, p. 36, ch.
20, § 3.
1846-7, p. 26, ch.
28, § 17.
Post. ch. 81, 82.

How the fund is received into and paid out of the treasury.

§ 9. All money belonging to the literary fund, shall be received into and paid out of the public treasury, upon the warrant of the second auditor: but no warrant for paying out such money shall be issued without the special authority of the board.

1 R. C. p. 84, ch.
33, § 8.
1820-21, p. 13, ch.
10, § 3, 7.

§ 10. The second auditor shall negotiate all contracts, and draw all writings which he may be required by the board to negotiate and prepare; and adjust, settle, and balance all accounts of agents of the board, or other persons having accounts with the literary fund.

1820-21, p. 14, ch.
10, § 10.

§ 11. All securities for money belonging to the literary fund shall be deposited with the second auditor for safe keeping, and he shall return, with his annual report, a list thereof, and statement of their value.

1831-2, p. 13, ch.
12, § 2.

CHAPTER LXXIX.

OF WHAT THE LITERARY FUND CONSISTS, AND HOW IT IS APPROPRIATED.*

SEC.

1. } Object of the fund and of what it
2. } consists.
3. } Reports to be made to auditor of
4. } sales of land forfeited for taxes.
5. } Penalty for failure.
5. How proceeds of sale recovered from commissioner of sales.
6. Fund appropriated to counties, &c., for schools; fund appropriated to the university; and

SEC.

- fund appropriated to military institute.
7. Order of priority in payment of.
8. No school quota to be paid until accounts and reports, and the bond of superintendent, are received.
9. Undrawn quotas when forfeited.

Of what it consists and its objects.

1 R. C. p. 82, ch. 33, § 1, 2, 10.
1842-3, p. 29, ch. 38, § 3.

§ 1. All money, stocks, or other property, which now or hereafter may belong to the literary fund, shall be devoted to the promotion of learning.

1 R. C. p. 82, § 1, 2, 5, 10, 11.
1836-7, p. 9, ch. 8, § 1, 2.
1845-6, p. 31, ch. 40, § 8.
1846-7, p. 26, ch. 28, § 18.

§ 2. To the literary fund shall belong whatever shall accrue to the state from escheats, forfeitures, or fines, (except militia fines,) from the estate of a decedent of which there is no other distributee, or from any other property as derelict and having no other owner; and also whatever shall be received from the *United States*, on account of payments by this state to officers of the Revolution, for half-pay, or commutation thereof; and whatever may arise from lands for taxes thereon, for the year eighteen hundred and thirty-one, or any year prior thereto.

1845-6, p. 13, ch. 6, § 1, 2.

§ 3. The clerk of the circuit court of each county west of the Alleghany mountains, shall annually, before the first day of December, transmit to the first auditor an abstract of all orders of such court, for the sale of land by the commissioners of forfeited and delinquent lands, or for the confirmation of such sales, or for the payment of the proceeds of such sales

See post, ch. 114, § 1, 2, 3, and note to those sections.

* It was enacted on the 2d of February 1810, that all escheats, confiscations, fines, penalties, and forfeitures, and all rights in personal property, accruing to the commonwealth as derelict, and having no rightful proprietor, shall be appropriated to the encouragement of learning; and the auditor was directed to open an account, to be designated "the literary fund," Sess. Acts 1809-10, p. 15, ch. 14. There were other acts passed concerning the fund in 1811-12, p. 16, ch. 10; p. 29, ch. 18, § 17; 1812-13, p. 35, ch. 25; 1813-14, p. 22, ch. 3, § 30; p. 27, ch. 3, § 52. By an act of the 24th of Feb. 1816, an addition was made to the fund of the debt due to the state from the *United States*. Sess. Acts 1815-16, p. 6, ch. 2, § 5. Other acts concerning the fund, passed in 1816-17, p. 17, ch. 11; p. 25, ch. 20; 1817-18, p. 7, 8, ch. 4. On the 21st of Feb. 1818, an act passed providing for the appointment, annually, by the court of every county and corporation, of commissioners of schools, at which poor children were to be educated. This act appropriated for each county and corporation, annually, such proportion of \$45,000 as its free white population might bear to the whole free white population of the state; it also provided for an university, so soon as the site of the university should be fixed; it appropriated \$15,000 a year for defraying the expenses of procuring the land, and erecting the buildings, and for the permanent endowment of the university. Sess. Acts 1817-18, p. 11 to 15. The several acts concerning the literary fund were reduced into one by the act of the 3d of March 1819, in R. C. p. 82, ch. 33; since which many acts have been passed, which are revised in the chapters under this title, and referred to in the margin thereof.

into the treasury. Such abstracts shall shew the name of each purchaser at any such sale, the amount of money in the commissioners' hands, deducting the commissions allowed by the court, and the expenses of sale, and also whether the said commissioners have made reports of their proceedings according to law. Any clerk failing to comply with this section shall forfeit six hundred dollars.

§ 4. If a commissioner fail to report any sale for six months after the order of sale was made, or for any further time allowed by the court for the purpose, (of which failure such abstract shall be evidence,) he shall forfeit one hundred dollars. 1845-6, p. 13, ch. 6, § 1, 2.

§ 5. If the balance in the hands of any commissioner, arising from any such sales, after deducting the commissions and expenses of sales, which may have been allowed by the court, be not paid into the treasury, in the month of December next ensuing the collection thereof, the first auditor shall proceed against him and his sureties, and their personal representatives, in the same manner, and judgment shall be given for the same, with like damages and penalties, and with the same effect, as is prescribed in chapter forty-two, for the recovery of money which ought to be paid by sheriffs. 1838, p. 19, ch. 8, § 10. Ante, p. 222, ch. 42.

How the fund is appropriated.

§ 6. The following sums shall be annually appropriated out of the revenue of the literary fund, that is to say:—

First. The sum of seventy thousand dollars, to be so divided among the several counties and those cities and towns which have corporation courts, that the part of every such county, city or town, shall bear to the whole sum the same proportion which its free white population may bear to the whole free white population of the State, according to the next preceding census, taken under the authority of the *United States*, and to be paid to such local officers of such counties, cities and towns, and to be applied in such manner, as may be prescribed by law. But when any new county is created out of part or parts of one or more counties, after the time of taking such census, the school commissioners of the county or counties from which the new county is taken, shall, for the fiscal year in which the new county is created, apply the quotas allotted them out of the literary fund, in such part of the new county as is taken from their county or counties, in like manner as if the new county had not been created; and for subsequent years, until a new census is taken, the second auditor shall apportion the amount of the school quotas to be paid such new county and the county or counties from which it is taken, according to the first returns of persons subject to county levies, that may be made after the creation of the new county. This section shall apply to a case in which part of a county is added to another. I R. C. p. 87, 8, 9, ch. 33, § 10, 12, 16. 1820-21, p. 15, 16. ch. 11, § 1, 4. 1821-2, p. 14, 15, ch. 13, § 1, 4. 1823-4, p. 9, 10, ch. 7. 1828-9, p. 13, 16, ch. 14, § 1, 4, 9, 10. 1829-30, p. 11, ch. 8, § 1, 2. 1832-3, p. 13, ch. 11. 1835-6, p. 7, ch. 4. 1836-7, p. 13, ch. 11. 1838, p. 31, 33, ch. 19, 20. 1839-40, ch. 8. 1840-1, ch. 14, 24, 26. 1841-2, ch. 24. 1842-3, ch. 30. 1843-4, ch. 29, 30. 1844-5, ch. 21, 22. 1845-6, ch. 40, § 6, 7; ch. 41, 2, 3. 1846-7, p. 16, ch. 15, p. 23, ch. 28, § 7, 8, 9; p. 26 to 36, ch. 29 to 33. 1848-9, p. 56, ch. 105.

1 R. C. p. 89.

§ 20.

1819-20, p. 14, ch.

13.

1820-21, p. 15, ch.

11.

1822-3, p. 13, ch.

11.

1823-4, p. 9, ch. 7;

p. 11, ch. 8,

§ 2, 3, 4, 5.

1826-7, p. 9, ch. 5,

§ 1.

1836-7, p. 13, ch.

11.

Second. To the university of *Virginia* fifteen thousand dollars, subject, however, to the reservation, under laws now in force, of such portion thereof, as may be required to meet any liability incurred by the literary fund on account of the university, and also of such other portions thereof as the legislature may, at any time hereafter, direct to be applied to the payment of the principal or interest of loans heretofore made to the university from the literary fund, or from other sources, and for the payment of which loans the annuity of fifteen thousand dollars has been or shall be pledged in pursuance of any act heretofore or hereafter passed. But the annuity is upon conditions that the said institution, during its continuance, shall educate thirty-two young men, (above the age of seventeen,) one from each senatorial district if there be applicants, and if not, from the state at large, without charge for tuition, board, use of the library, laboratories, lecture rooms, public halls or dormitories; to be selected by the visitors and faculty with reference to the character and capacity of the applicant, and the inability of the parent or pupil to furnish the means of education, upon such testimonials as may be presented.

1841-2, p. 21, ch.

24, § 1.

See ante, p. 173,

ch. 34.

Third. To the *Virginia* military institute fifteen hundred dollars.

§ 7. In case of any deficiency of the said revenue to meet all of the said annual appropriations, they shall be preferred in the order of priority in which they are made in the preceding section.

How and when quotas for schools are paid out of the fund.

1828-9, p. 15, ch.

14, § 9.

§ 8. No annual quota of the literary fund, allotted to any county or corporation, shall be paid before the first day of January succeeding the allotment, nor until a certified copy of the accounts and reports, for the preceding year, of the school commissioners and superintendent of such county or corporation, and of the official bond of such superintendent, shall have been received by the second auditor, nor unless it appear by such reports and accounts, that the unexpended balance in the hands of such superintendent is less than one year's annual quota of such county or corporation.

1834-5, p. 10, ch.

8, § 5.

1846-7, p. 25, ch.

28, § 13.

1848-9, p. 56, ch.

106.

§ 9. All school quotas due any county or corporation, which shall have remained in the public treasury undrawn for two years after they are payable, shall be forfeited by such county or corporation, and constitute a part of the permanent capital of the literary fund.

CHAPTER LXXX.

OF FUNDS FOR EDUCATION FROM GLEBE LANDS AND CHURCH PROPERTY; AND FROM GIFTS, GRANTS, DEVISES AND BEQUESTS.

SEC.

1. Glebe lands and church property; in whom vested and how applied.
2. Gifts, devises, &c., for literary purposes, when valid.
3. Who to take and hold under such gifts, &c.
4. Duty of attorney for the commonwealth as to wills for such purpose.

SEC.

5. How trustees for such property may be appointed, and their duty, &c.
6. Attorney's services paid for out of the subject.
7. Special provision as to the Dawson fund.
8. Right reserved to legislature to repeal or enforce the 2nd section as to gifts, &c.

§ 1. All glebe lands and church property, or the proceeds thereof, which may be appropriated under the sixth section of chapter seventy-seven, for education in any county, corporation or school district, shall be vested in the school commissioners of such county, corporation or school district. The revenue or income thereof shall be applied by them, subject to the same penalties, and under the same regulations as are prescribed in respect to that portion of the literary fund which is allotted to such county, corporation or school district.

1 R. C. p. 89, ch. 33, § 18.
Ante, p. 362, ch. 77, § 6.

§ 2. Every gift, grant, devise or bequest which since the second day of April in the year one thousand eight hundred and thirty-nine, has been, or at any time hereafter shall be, made for literary purposes or for the education of white persons within this state, (other than for the use of a theological seminary,) whether made to a body corporate or unincorporated, or to a natural person, shall be as valid as if made to or for the benefit of a certain natural person, except such devises or bequests, if any, as have failed or become void by virtue of the seventh section of the act of assembly, passed on the said second of April eighteen hundred and thirty-nine, entitled an act concerning devises made to schools, academies and colleges.

1839, p. 11, 12, 13, ch. 12.
1840-41, p. 54, ch. 26.

§ 3. When such gift, grant, devise or bequest is to the board of the literary fund or any other corporation or any county or natural person, the subject shall be taken and held by them respectively. If any such corporation, county or natural person refuse to take and hold, the subject shall be taken and held by trustees appointed as hereinafter directed. In either case it shall be taken and held for the uses prescribed by the donor, grantor or testator, or such as have been prescribed in any particular case, by any law passed since the said act of the second day of April in the year eighteen hundred and thirty-nine.

§ 4. The attorney for the commonwealth in the circuit court of any county or corporation, in which such will could be

offered for probat, shall, in the name of the commonwealth, institute all necessary proceedings to have such will admitted to record.

1839, p. 11, 12, 13,
ch. 12.
1840-41, p. 54, ch.
26.

§ 5. When any such gift, grant or will is recorded, and no trustee has been appointed, or the trustee dies or refuses to act, the circuit court of the county or corporation in which the trust subject or any part thereof may be, in the case of a gift or grant, or in which the will is recorded, may, on the motion of the attorney for the commonwealth in such court, (whose duty it shall be to make such motion,) appoint one or more trustees to carry the same into execution. The trustees, whether appointed by such instrument or under this section, may sue and be sued in the same manner as if they were trustees for the benefit of a certain natural person. And for enforcing the execution of such trust a suit may be maintained in the name of the commonwealth, where there is no other party capable of prosecuting such suit.

Id.

§ 6. The attorney for the commonwealth out of the trust subject may be allowed such fee for his services as said circuit court shall deem reasonable.

1840-41, p. 53, ch.
26.

§ 7. The first, second, third, fourth and fifth sections of the act passed on the tenth day of March eighteen hundred and forty-one, entitled "an act concerning the estate of *Martin Dawson*, deceased, and for other purposes," shall continue in force.

10 Leigh 147.
1 Rob. 402.

§ 8. In case any devise or bequest, authorized by the second section of this chapter, shall hereafter be made, the legislature, as to any such, reserves the right at any time to suspend or repeal the authority thereby given. But if in any case it shall do so, it will provide that the subject of such devise or bequest shall vest or be vested in such person, his heirs, executors or administrators, as would have been entitled, had the devise or bequest not been made.

CHAPTER LXXXI.

OF SCHOOLS FOR INDIGENT CHILDREN.

SEC.		SEC.	
1.	How districts laid off, commissioners appointed and notified.	10.	Each commissioner in his district to attend to the schools, teachers, &c., in his district.
2.		11.	
3.		12.	
4.	Board of commissioners a corporation.	13.	When he shall be liable for expenses thereof.
5.	When and where to meet and elect superintendent, &c.	14.	Superintendent to give bond, and attend meetings of the board.
6.	Intermediate and called meetings.	15.	
7.	General powers and duties of the board.	16.	He shall receive, disburse and keep accounts of school fund and make returns thereof.
8.	Portion of school fund may be applied to orphan asylums, &c. or colleges, &c.	17.	Other special duties of superintendent.
9.		18.	His compensation.

SEC.

19. Duties of teachers.
 20. Accounts of superintendent to be settled by the board.
 21. Manner in which his charges shall be verified.
 22. Amount of his expenditures limited.
 23. } Annual report of the board of commissioners to be made to clerk of
 24. } the court. Penalty for failure.

SEC.

25. Duties of clerks of courts in respect to schools, and their compensation.
 26. For failure of duty superintendent liable to suit or motion.
 27. Every other officer, also.

Courts to lay off counties and towns into districts, and appoint school commissioners.

§ 1. Annually in October, or as soon thereafter as may be, the court of every county and corporation shall lay off the same into districts of convenient size, or revise and alter or confirm the districts; the bounds of each district to be stated in the order of court, and arranged so as to equalize as near as may be all the districts, having regard to the population and territory of, and the number of indigent children in, each district.

§ 2. Such court shall at the same time annually appoint one person in each district as school commissioner thereof, who shall reside therein, and be denominated school commissioner No. 1 or No. 2, and so on, according to the number of his district. Whenever a vacancy shall occur in the office of school commissioner, the court shall as soon as may be fill the same.

§ 3. The sheriff or sergeant of such county or corporation shall give notice, without delay, to every commissioner, of his appointment.

Board of commissioners, their meetings and the appointment of superintendent.

§ 4. From the time of the first meeting of said school commissioners, or a majority of them, they and their successors thenceforth shall be a corporation under the style of "*The board of school commissioners for the county (or corporation) of .*"

§ 5. The said board shall meet annually at the courthouse of their county or corporation, on the first day of the court next after their appointment, and elect a superintendent of schools for such county or corporation who shall be also clerk and treasurer of the board. His term of office shall commence on the first of January thereafter and continue one year. If the person so elected refuse to serve or fail to give the bond required by law, or should the office become vacant from any cause, the said board shall, as soon thereafter as may be, elect another superintendent.

§ 6. Intermediate meetings of the board may be appointed by it at its annual meeting. A special meeting may be called at any time by one-third of the whole number, but in such case notice of the time and place thereof shall be given to each commissioner who may be in the county or corporation.

The board may adjourn from time to time, and less than a majority thereof may adjourn from day to day.

1 R. C. p. 88, § 13,
14, 15.
1828-9, p. 16, ch.
14, § 11.
1839, p. 13, ch.
13.

§ 7. The said board shall have a general control over the administration of the school fund and schools in its county or corporation: it shall annually apportion the school fund under its control among the several school districts as near as may be, according to the number of indigent children in each district: it shall regulate the number of indigent children to be taught in the schools, the price of their tuition, and the selection of the teachers; also the establishment of schoolhouses, the purchase and distribution by the superintendent of books, stationery and other things for the use of the schools; such purchases, however, in no case to exceed five *per centum* of the quota of such county or corporation out of the literary fund.

1839-40, p. 23, ch.
8.
1846-7, p. 23, ch.
28, § 7, 8.
1848-9, p. 56, ch.
107.

§ 8. The board of school commissioners of any county or corporation may appropriate to any orphan asylum, Lancasterian or other school therein, for the education of such indigent children as they may enter in such school, a portion of the school fund of such county or corporation.

1835-6, p. 7, ch. 4,
§ 1.
1846-7, p. 24, ch.
28, § 9.

§ 9. The said board, when it appears to them that the income of their school fund is more than sufficient for the education of the poor children in the county or corporation, may at their annual meeting transfer the surplus of the ensuing year to any incorporated college or academy in operation in such county or corporation, to be applied to the tuition of such indigent youth as may be entered in such institution by the said board.

Duties of individual commissioners.

1 R. C. p. 88, ch.
33, § 13, 19.
1822-3, p. 14, ch.
11, § 4.
1828-9, p. 14, 16,
§ 8, 13.
1840-41, p. 51, ch.
23.
1845-6, p. 29, 30,
31, ch. 40, § 2 to
5.
1846-7, p. 23, 25,
ch. 28, § 3, 5, 11,
14.

§ 10. Each school commissioner shall register and report to the superintendent the number, names, ages and sexes of the indigent children within his district between the ages of eight and eighteen years. He shall subscribe to schools in his district for such a number of days' tuition as he shall think proper, at the rate of compensation allowed, so that the aggregate of such compensation shall not exceed his district's portion of the school fund. And he shall select for and enter at such schools, with the consent of their fathers or other guardians, so many of the indigent children of his district as will not exceed in their probable attendance at such schools the number of days subscribed thereto.

§ 11. He shall visit such schools, examine or enquire into the character and qualifications of the teachers, and the conduct and learning of the pupils, and note in his register any remarkable instances of superior intelligence or worth among the children entered by him.

§ 12. He shall examine the teachers' accounts, and certify the same, if found to be correct in form and substance, to the superintendent, on whom he shall draw orders for the amount due on such accounts, and also for stationery and other arti-

cles required for the tuition of the indigent children so entered by him. And he shall give such information to the superintendent as may at any time be required by him.

§ 13. Every commissioner contracting debts for school purposes to a greater amount than the portion of the school fund allotted to him, shall be personally liable to the creditor for such excess, unless it is ordered by the board to be paid out of any unexpended balance for the current year in the hands of the superintendent. 1836-7, p. 14, ch. 12, § 2.

Of the superintendents and teachers.

§ 14. Each superintendent of schools shall, in the court of his county or corporation, give bond in such penalty as the court shall approve, not being less than two thousand dollars. 1 R. C. p. 28, ch. 33, § 13, 14, 15. See ante, p. 28, ch. 13, § 8.

§ 15. He shall attend every meeting of the board of school commissioners for his county or corporation, and keep a faithful record of their proceedings. 1828-9, p. 13, § 5. 1845-6, p. 29, ch. 40, § 2, 4.

§ 16. He shall receive, disburse, and keep accounts of all moneys belonging to the school fund of the county or corporation, shall keep a separate account with each district, crediting it annually with its proportion of such fund, notifying the commissioner thereof of the amount so credited as soon as it is ascertained, and charging to such district the orders drawn on him by such commissioner; and he shall return all such accounts, balanced, on the thirtieth of September and the thirty-first of December of each year, or as required by the board of school commissioners, to the next meeting of such board succeeding those dates, or the date of such requisition. 1 R. C. p. 28, § 14. 1828-9, p. 13, § 5. 1845-6, p. 30, § 4.

§ 17. He shall certify to the next court of his county or corporation, after it happens, any vacancy in the said board, and shall, under its regulations and within the limits prescribed by law, fix the *per diem* rate of compensation to teachers for the tuition of indigent children. He shall keep a register of all such children entered with such teachers, and shall supply them with such books, stationery, and other things, as may be required by a commissioner, and annually report to the said board an abstract of the information obtained from the reports of the commissioners and teachers, or from any other source, relative to the tuition of such children, and the condition and operation of the school system, or any other matters deemed useful by him, or required by the board or the second auditor to be communicated. 1845-6, p. 29, 30, ch. 40, § 1, 2, 4. 1846-7, p. 25, ch. 28, § 12.

§ 18. Upon the certificate of the said board that he has performed all the duties required of him by law, he shall receive a compensation of five *per centum* on the money belonging to the school fund lawfully disbursed by him. 1846-7, p. 25, § 12.

§ 19. Every teacher shall keep an accurate memorandum of each day's actual instruction of every child entered at his school. He shall render an account of the same annually, in the prescribed form, and verified by his affidavit to the com- 1828-9, p. 15, ch. 14, § 8. 1845-6, p. 30, ch. 40, § 34. 1846-7, p. 23, ch. 28, § 7.

missioner of his district, upon whose certificate, as hereinbefore provided, he shall receive the *per diem* rate fixed therefor. He shall furnish to such commissioner, and to the superintendent, such information concerning the management and instruction in his school, as either of them may at any time require of him.

Superintendent's accounts.

1 R. C. p. 88, § 14.
1828-9, p. 14, 15,
§ 4, 7.

§ 20. The board of school commissioners for each county and corporation shall audit and settle the account of the superintendent made up to the thirtieth day of September in each year, or oftener if it shall think proper, and shall require any balance due by him to be paid over to his successor, and if it be not done, the board shall report the fact and the cause thereof to the second auditor.

1828-9, p. 15, ch.
14, § 8.
1845-6, p. 31, ch.
40, § 5.

§ 21. No item of disbursement by the superintendent shall be allowed by the board, unless supported by vouchers; nor shall any such item for the purchase of books, stationery, or other necessities for such schools, or for the compensation of the superintendent, be allowed, unless authorized by a special order of the board; nor any item for tuition (except where expressly authorized by law,) unless the same be paid on the order of a school commissioner, accompanied with the teacher's account, (in the form prescribed by the second auditor,) and be for an amount not exceeding the rate of four cents per day for each child's attendance.

1828-9, p. 15, § 10.

§ 22. The disbursements of the year shall not exceed the income of the school fund of the county or corporation for such year, together with the balance in the superintendent's hands at the end of the preceding year, and such arrearages thereof as may be due. Nor shall the board incur any debt to be paid out of the income of any succeeding year.

Annual report of the board.

1 R. C. p. 88, § 14,
19.
1821-2, p. 15, ch.
13, § 4.
1822-3, p. 14, ch.
11, § 3.

§ 23. The board of school commissioners for each county or corporation, shall, either itself, or by a committee of not less than three, appointed by it for the purpose, annually make a report of their proceedings during the year ending the thirtieth day of September, shewing the number of indigent children in the county or corporation, the number of schools therein, and the number of children educated in such schools, and the price of tuition, what sums have been expended during the said year, and how much remains unexpended. The said report, together with a certified copy of the accounts and reports of the superintendent for the same year, and with such remarks as the said board or committee shall think proper, shall be returned to the clerk of the court of the county or corporation, annually, before the tenth day of October.

§ 24. Every member of any board which shall neither make such return nor appoint a committee for the purpose in due time, and every member of any committee so appointed who shall fail to make such return, shall forfeit ten dollars. ^{1822-3, p. 13, ch. 11, § 3.}

Duties of clerks of courts, and their compensation.

§ 25. Every clerk of a county or corporation court shall prepare the official bond, required by law from the superintendent of schools for his county or corporation. He shall keep in his office the official accounts and reports of such superintendent, and of the board of school commissioners, and transmit to the second auditor, annually, on or before the twenty-fifth of October, certified copies of such bond, accounts and reports, and of the orders of his court, laying off or changing the school districts therein, or appointing school commissioners; for which services, and for recording the said bond, he shall receive three dollars out of the funds in the superintendents' hands. Any clerk failing in any duty prescribed by this section, shall forfeit twenty-five dollars. ^{1828-9, p. 15, § 6. 1846-7, p. 23, 25, 26, § 4, 16.}

Proceedings against officers for failure of duty.

§ 26. If any superintendent of schools, or his personal representative, shall fail to pay any money received by him by virtue of his office, when he ought to do so, the same may be recovered by the board of school commissioners, any teacher employed by them, or any other person entitled to such payment, by warrant or by motion, (according to the amount,) against said superintendent and his sureties in his official bond, and against his and their personal representatives. On any such warrant or motion, the judgment shall be for the amount which ought to be paid to the plaintiff, with damages in lieu of interest, at the rate of fifteen *per centum* per annum, from the time when the same ought to have been paid, until such judgment shall be satisfied. ^{Id. 1846-7, p. 25, ch. 26, § 15.}

§ 27. If any superintendent of schools, school commissioner, or clerk of the court of any county or corporation, shall fail to perform any duty required of him by any section of this chapter, and for which failure no specific penalty is provided, he shall for every failure forfeit ten dollars. The second auditor shall give information of any such failure, to the attorney for the commonwealth in the circuit court having jurisdiction over such county or corporation, who shall forthwith institute proceedings to enforce the said forfeiture. ^{1828-9, p. 15, ch. 14, § 12.}

CHAPTER LXXXII.

OF FREE SCHOOLS.

SEC.		SEC.	
1.	System may be adopted in towns by council; who to elect commissioners.	14.	} Amount necessary, to be assessed, and levied for; how in counties and how in towns.
2.	In counties, vote to be taken for and against system.	15.	
3.	} How polls to be taken; where result recorded.	16.	
4.		17.	Report to be made by the board annually to the second auditor.
5.	If system adopted, county to be laid off into districts.	18.	} Powers and duties of commissioners, same as under 81st chapter.
6.	Commissioners to be elected for each district.	19.	
7.	Who to vote in such election.	20.	} Their compensation.
8.	Board of commissioners a corporation.	21.	
9.	Powers and duties of the board.	22.	} Superintendent of schools; his appointment, duties, powers and compensation.
10.	Bond of superintendent; how taken and recorded.	23.	
11.	District schools; what to be taught therein.	24.	Duties of teachers of free schools.
12.	Who to be admitted in such schools.	25.	Duties and compensation of clerk, as under 81st chapter.
13.	Schoolhouses and teachers; how provided.	26.	Penalty on officers for failure of duty.
		27.	} Free schools heretofore established continued. How they may be abolished.
		28.	
		29.	How free schools now existing may be adopted by any county.

How adopted; commissioners elected; their duties.

§ 1. The council of any city or town, having a corporation court, may adopt the free school system provided for in this chapter, and thereupon lay off the city or town into districts, and may afterwards revise or alter such districts. It shall, upon such adoption, and annually afterwards, elect for every such district a commissioner, who shall continue in office until his successor is appointed; and it may fill any vacancy happening in the said office.

1845-6, p. 31, ch. 40, § 6, 7; p. 32, ch. 41, § 1.

§ 2. On the petition of one-fourth of such of the white male citizens aged twenty-one years, resident in any county without the limits of any such city or town, as may be entitled to vote in the election of a delegate from such county, or shall have been assessed with a part of the county levy within the preceding year, and actually paid the same, the court of the said county shall order a vote to be taken *for* or *against* the said free school system, on some certain day (other than a general election day,) within six months, at all the places within such county at which polls are required to be opened for such delegate. A copy of such order shall immediately be posted by the clerk at the front door of the courthouse; and every such resident, so entitled to vote for delegate or so assessed, may vote at any poll opened under the said order.

14.

Ante p. 71, 240.

§ 3. The poll shall be taken, superintended, conducted, certified and returned to the court of the county by the officers, in the manner, under the regulations, and subject to

the penalties prescribed in the seventh and forty-seventh chapters, *as far as the same may be applicable*.*

§ 4. If two-thirds of the votes be in favour of adopting the free school system, the said court shall have the fact entered on the minutes of their proceedings, and order a copy of such entry to be delivered to the existing board of school commissioners of such county. 1845-6, p. 31, ch. 40, § 6, 7; p. 32, ch. 41, § 1. 4 Grat. 528.

§ 5. The said board shall cause the county to be laid off into districts, which shall each have a sufficient number of children of the proper age for a school, and be of such size that all the children in the district may daily attend the school therein. Such districts shall be numbered and their boundaries defined, and entry shall be made thereof on the record of the board's proceedings. The board may afterwards, at any annual meeting, revise and alter such division and boundaries, making entry thereof. A copy of every such entry shall be returned to the county court, to be recorded on its minutes. 1845-6, p. 32, ch. 41, § 2.

§ 6. As soon as may be after a county is so laid off into districts, and annually afterwards, an election shall be held in each district for a commissioner, on such day and at such place as shall be fixed by the board of school commissioners for such county in office at the time, who shall cause notice thereof to be given by an advertisement posted at the front door of the courthouse, and at the most public place in the district. Id.

§ 7. Every resident in any such district, entitled to vote at any poll opened under the second section, may vote in an election held under the preceding section. Such election shall be held by three persons in each district appointed by the said board, and shall be certified by those holding the same, and returned to the first meeting of the board thereafter. Each commissioner so elected shall continue in office until a successor shall be appointed. Any vacancy happening in such office shall be filled by the board. Id.

§ 8. As early as possible after their first election, the said commissioners shall meet at the courthouse of their county or corporation, and from the time that a majority of them shall so meet, they shall be a corporation under the name of "*The board of school commissioners for the county* (or corporation) of _____," and be the successors of the board of school commissioners previously existing in said county or corporation, under the eighty-first chapter, or under any other law, and shall thenceforth be vested with all the property belonging to such previously existing board, which shall deliver to said successors all their books and records. Id. § 3.

§ 9. The said board shall have, and exercise and perform all the powers and duties prescribed by the eighty-first chapter in respect to the boards of school commissioners appointed Ante, p. 371, ch. 81.

* The revisors used the words "*mutatis mutandis*;" the senate struck them out, and in lieu thereof, inserted "*as far as the same may be applicable*;" which do not convey, with equal precision, the meaning desired.

Ante, p. 368, ch.
79, § 8.

under it. And after they certify to the second auditor a copy of the returns of the first election of commissioner, and of the organization of the board in pursuance of this chapter, the annual quotas of the literary fund allotted to said county or corporation shall be paid by the superintendent appointed by them, subject, however, to the restriction provided by the eighth section of the seventy-ninth chapter.

§ 10. The bond of the superintendent to be appointed by said board, shall be taken by the board, and returned by it to the clerk of the court of the county or corporation, who shall record the same.

A school to be in each district.

Id. p. 33, ch. 41,
§ 5.

§ 11. The said board shall establish a school in each district, in which shall be taught reading, writing, arithmetic, English grammar, and geography, and, when it is practicable, history, the elements of physical science, and such other branches of learning as the said board may require.

Id.

§ 12. Any white child, between the ages of six and twenty-one, resident in a district, may attend and be instructed at the school thereof.

Id. § 7, 3, 10.

§ 13. The said board shall provide a schoolhouse in each of said districts, employ a teacher for each school, fix his salary, and provide books and stationery for such of the children as they think ought to be provided with them, free of charge. All payments for the salaries of teachers, or any other charges on the school fund, shall be made only upon the orders of said board entered on the record of their proceedings.

How funds raised for the schools.

§ 14. Upon every county or corporation, for which there is a board of school commissioners under this chapter, there shall be annually assessed such sum as the said board shall deem necessary, in addition to their other funds, for the free school system therein.

1845-6, p. 36,
§ 17, 19.

§ 15. A report from every such board, stating the amount to be assessed on their county or town, shall be annually delivered, if they be for a county, to the court thereof, on the first day of its May term, and if they be for a town, to the council thereof, at its first meeting after the first of May. When the board is for a county wherein there is a town for which there is no corporation court, but which provides for its poor and keeps its streets in order, the report shall shew, separately, the amount to be assessed upon such town, and the amount to be assessed upon so much of the county as is without the limits of such town.

§ 16. The amount which, according to such report, is to be assessed on any county, shall be chargeable on it, and the county court shall provide therefor when it orders the annual

county levy. It shall be payable out of the proceeds of the said levy to the board of school commissioners for such county, and shall be paid thereout to such persons and in such sums as the said board may direct. Whatever amount is, according to such report, to be assessed on any town, shall be provided for by the town council.

Report to be made by the board.

§ 17. Every such board shall annually, before the twenty-fifth day of October, report to the second auditor the number of schools therein under its control, the price paid for tuition, branches of learning taught, and number of children in the same, and their opinion of the system, with any suggestions as to the means of improving it. 1845-6, p. 36, ch. 41, § 15.

Powers and duties of commissioners, and their compensation.

§ 18. Every commissioner appointed under this chapter, shall have, exercise, and perform the same powers and duties in relation to the school in his district, as are prescribed in relation to school commissioners appointed under the eighty-first chapter, except such as by this chapter are devolved on the board. Ante, p. 371, ch. 81.

§ 19. He shall visit the school in his district at least once in each month, examine the register of the teacher, the condition of the schoolhouse and other matters touching the mode of teaching and the discipline therein. He may suspend or expel any pupil of incorrigibly bad habits or guilty of gross misconduct. He shall annually, in the month of September, ascertain the number of white children in his district between the age of six and twenty-one, and shall at its annual meeting present to the board a written report of his proceedings and of the condition of the school during the preceding year. 1845-6, p. 33, § 4, 7.

§ 20. He shall be allowed for his services a sum not exceeding ten dollars, to be fixed by the board, and be reimbursed, on its order, his necessary expenses while attending its meetings.

Superintendent of schools; and the teachers.

§ 21. A superintendent of schools, for every county or corporation which adopts the system of schools provided for in this chapter, shall be appointed by the board at their first meeting, to serve until their first annual meeting, and at such, as well as each succeeding annual meeting, to serve for one year, or until his successor shall be appointed and qualified.

§ 22. He shall have the same powers and perform the same duties that are devolved on the superintendent of schools appointed under the eighty-first chapter, except so far as any such duties are herein devolved on any other person. Ante, p. 373, ch. 81.

1845-6, p. 32, ch.
41, § 3.

§ 23. He shall be subject to removal from office by the board, and shall receive such compensation for his services as superintendent, clerk and treasurer, as it may allow.

1845-6, p. 34, ch.
41, § 9.

§ 24. The teacher of every such free school shall keep a book, to be furnished by the board, in which he shall register the names and ages of all the pupils, the names of the parents or guardians, the dates of their entrance in and leaving the school, and the days of their attendance, and also of the visits of the school commissioner. The said book shall be delivered by the teacher at the end of the year to the superintendent, with an abstract shewing the length of each session, the number of pupils male and female, and the aggregate number of days of attendance of the whole. Until he shall do so, one-fourth of his salary shall be withheld.

Duties of clerks of courts; penalties on officers.

Ante, p. 375, ch.
81.

§ 25. The clerk of the court of the county or corporation in which such free school system is adopted, shall receive the same compensation and perform the same duties in respect to the said system as are prescribed in respect to the system of schools provided in the eighty-first chapter, except so far as any such duty is suspended by this chapter.

1845-6, p. 35, ch.
41, § 13, 22.

§ 26. Any commissioner, superintendent or teacher of schools under this chapter, or any clerk of any county or corporation court in which such schools are established, who shall fail to perform any duty devolved on him by any section of this chapter, shall forfeit the same sum that is prescribed in the eighty-first chapter, as a forfeiture for failure to perform any similar duty prescribed therein. And for failure to perform any duty specified in this chapter, for which no other specific penalty is herein prescribed, every such officer shall forfeit ten dollars.

Ante, p. 375, ch.
81.

Certain statutes for establishing free schools not repealed; how a county may change its school system.

1828-9, p. 13, ch.
14, § 1, 2, 3.
1845-6, p. 36, ch.
41, § 23.

§ 27. Nothing in this code shall be construed to repeal, as to any county or corporation in which free schools shall have been adopted prior to the day before it takes effect, any law allowing the same, but such law shall continue in force in such county or corporation until the adoption therein of the free school system hereinbefore provided for.

§ 28. In any county which has heretofore adopted, or which shall hereafter adopt, the district free school system, if at any time one-fourth of such of the white male citizens, as are described in the second section of this chapter, shall petition for the abolition of said system, the court of the county shall order a vote to be taken *for* and *against* the abolition of the said free school system; which vote shall be superintended and conducted by the same officers, subject to the same penalties, at the same places, and the same proceedings shall be had in

all respects, as are prescribed in the second and third sections. If a majority of the votes be in favour of abolishing the said free school system, the court shall have the fact entered on their minutes, and thereupon the said district free school system shall from and after the first day of October next ensuing, be abolished in the said county, and the primary school system shall, be in full force and effect therein as it stood before the adoption of the free school system; and the court of the county or corporation shall, at its October term, make the proper arrangements for restoring and putting the said primary school system into operation.*

§ 29. The people of any county or corporation may adopt any special free school system which has been or may hereafter be passed into a law for a particular county, by complying with the provisions of said law.

CHAPTER LXXXIII.

OF THE UNIVERSITY OF VIRGINIA† AND OF COLLEGES AND ACADEMIES.

SEC.		SEC.	
1. }	University continued. Visitors,	11.	What branches of learning to be taught.
2. }	when and how appointed.	12.	Visitors or trustees of colleges and academies to make report.
3.	How office of visitor vacated and vacancy filled.	13.	Penalty if no such report be made.
4.	Rector and other officers to be appointed.	14.	How scholarships established in any literary institution.
5.	When and where board shall meet.	15.	How fund therefor to be invested.
6. }	Duties of the board. Expenses of	16.	Such donation irrevocable. Donor's right to nominate pupils.
7. }	visitors, how paid.	17.	Provision if donor fail to nominate.
8. }		18.	How society of alumni may provide a scholarship.
9.	When annual report to be made, and of what.		
10.	Each professor to receive salary and fees.		

Of the university.

§ 1. The university of *Virginia* shall be continued, and the visitors thereof shall be and remain a corporation under the style of "*The Rector and Visitors of the University of Virginia.*" They shall be at all times subject to the control of the legislature. 1 R. C. p. 90, ch. 34, § 2, 8, 9.

* The section as printed among the amendments of the joint committee on revision (p. 102, 3,) ends with the word *operation*. As it is enrolled, these words follow: "*and to be provided for and maintained in the manner mentioned in the four succeeding sections.*" They were probably, in engrossing the bill, put by mistake here, instead of at the end of § 14 of ch. 83. See post. note to that section, p. 384.

† See *ante*, p. 356, note to ch. 79. After the act of the 21st of February 1818, there mentioned, there was passed on the 25th of January 1819, "an act for establishing an university" which is in Sess. Acts, 1818-19, p. 15, ch. 19. 1 R. C. p. 90, ch. 34.

1 R. C. p. 90, ch.
ch. 34, § 2, 7, 11.

§ 2. On every twenty-ninth day of February, or as soon thereafter as may be, the governor shall appoint eight persons as visitors of the said university, two from each grand division of the state, whose term of office shall be until the next twenty-ninth day of February, but may continue until their successors shall be appointed. If a vacancy happen in the office of visitor, the governor shall fill the same.

Id. § 7.
1822-3, p. 12, ch.
10, § 2.

§ 3. If any visitor fail to perform the duties of his office for one year, without sufficient cause shewn to the board, the said board shall, at their next meeting after the end of such year, cause the fact of such failure to be recorded in the minutes of their proceedings, and certify the same to the governor, and the office of such visitor shall be thereupon vacant. If so many of such visitors fail to perform their duties that a quorum thereof do not attend for a year, upon a certificate thereof being made to the governor by the rector, or any member of the board, or by the chairman of the faculty, the offices of all the visitors so failing to attend shall be vacant.

1 R. C. p. 90, § 3.
1827-8, p. 14, ch.
18.

§ 4. The board of visitors shall appoint from their own body a rector, who, or in his absence, a president *pro tempore*, shall preside at their meetings. They shall also appoint a secretary to the board.

1 R. C. p. 91, § 7.
1826-7, p. 9, ch.
35, § 2.

§ 5. The said board shall meet at the university, at least once a year, and at such other times as they shall determine; the days of meeting to be fixed by them. Special meetings of the board may be called by the rector, or any three members. In either of said cases, notice of the time of meeting shall be given to every other member.

1 R. C. p. 91, 92,
§ 6, 8, 9, 10.

§ 6. The said board shall be charged with the care and preservation of all the property belonging to the university. They shall appoint as many professors as they deem proper, not exceeding ten, and, with the assent of two thirds of the whole number of the visitors, may remove any professor. They may prescribe the duties of each professor, and the course and mode of instruction. They may appoint a bursar and proctor, and employ any other agents or servants, regulate the government and discipline of the students, and the renting of the hotels and dormitories, and generally, in respect to the government and management of the university, make such regulations as they may deem expedient, not being contrary to law.

Id.

§ 7. They shall examine into the progress of the students, in each year, and shall give to those who excel in any branch of learning, such honorary testimonies of approbation as they deem proper.

§ 8. Such reasonable expenses as the visitors may incur in the discharge of their duties, shall be paid out of the funds of the university.

1822-3, p. 12, ch.
10, § 2.

§ 9. They shall before the tenth of October, annually, deliver to the second auditor a report to the general assembly, of the progress of the university, and its receipts and disburse-

ments during the year ending on the first day of July preceding, with the amount of salary received by each professor, including fees received from the students.

§ 10. Each professor shall receive a stated salary, not exceeding one thousand dollars, and also such fees of tuition as the board of visitors shall from time to time establish. He shall also have assigned to him by the board one of the pavilions at the university, and such other accommodations as the said board may prescribe.

§ 11. The following branches of learning shall be taught at the university: that is to say; the Latin, Greek, Hebrew, French, Spanish, Italian, German, and Anglo-Saxon languages; the different branches of mathematics, pure and physical; natural philosophy, chemistry, mineralogy, including geology; the principles of agriculture; botany, anatomy, surgery, and medicine; zoology, history, idiology, general grammar, ethics, rhetoric, and belles-lettres; civil government, political economy, the law of nature, and of nations, and municipal law.

Colleges and academies.

§ 12. The visitors, trustees, or other body having the government of any college or academy established in this state, shall annually, before the first day of November, make a report to the second auditor, shewing the condition of such college or academy, the state of its funds, the amount of its revenue, and the sources whence derived, its accommodations for, and the number of, its teachers and pupils, its fees of tuition, and the branches of learning taught in the institution.

§ 13. If no such report is made from any college or academy which receives any portion of the revenue of the literary fund, or to which any loan has been made out of the said fund, the second auditor shall withhold (until the report is made) the payment of such portion of the literary fund, or proceed to enforce payment of the said loan.

Scholarships.

§ 14. The board of visitors of the *Virginia* military institute,* and the visitors or trustees of the *University of Virginia*, and the colleges of *William and Mary*,† *Hampden Syd-*

* Concerning this institution, see ante, p. 173, ch. 34.

† In 1660, '61, it was directed that land be obtained for a college, Hen. Stat. vol. 1, p. 25, ch. 20; and that a petition be drawn up to the king for letters patent, (to gather the charity of people in *England*) Id. p. 30, ch. 35. The governor, council of state, and burgesses severally subscribed considerable sums of money and quantities of tobacco; and it was ordered that the commissioners of the county courts subscribe, and that they and the vestries of the parishes take the subscriptions of others. Id. 37. Under a charter, bearing date the 8th of February, in the fourth year of the reign of *William and Mary*, the college was established by this name, near the church then standing in *Middle plantation* old fields. 3 Hen. Stat. p. 122, ch. 3. Other acts were afterwards passed for the better support of the

ney,* *Washington*,† *Randolph Macon*, *Henry and Emory*, *Richmond*, *Bethany and Rector*, and the *Northwestern Academy* in *Harrison county*, may respectively establish scholarships in such institute, university, colleges and academy, under such regulations as they may prescribe.‡

1847-8, p. 19, ch.
17, § 2.

§ 15. Whenever any person shall deposite in the treasury of the state, or bequeath money to be so deposited, or devise or bequeath property to be sold and the proceeds so deposited, for the benefit of such institute, university, colleges and academy, to such an amount that the interest thereof will be sufficient to educate and maintain thereat one or more cadets or students, the said fund shall be invested in state stock, in the name and for the benefit of such institution.

Id. § 2, 3.

§ 16. Such donation shall be irrevocable, but the donor or his heirs, or their guardian, if they be under twenty-one years of age, shall have the right to nominate and place in such institution, one or more cadets or students according to the regulations aforesaid.

§ 17. If such donor or his heirs, or such guardian, shall fail for one year to nominate as aforesaid, the said board of visitors or trustees may appropriate the income of the said fund to the education and maintenance of indigent cadets or students, to be selected by them from the state at large.

Id. § 4.

§ 18. The society of alumni of any institution aforesaid may provide for and maintain a scholarship therein, by annual contributions, under such regulations as may be prescribed as aforesaid.

college. Id. p. 123, ch. 4; vol. 4, p. 74, ch. 3; p. 148, ch. 1, § 20; p. 432, 3, ch. 15, § 9, 10; vol. 5, p. 236, ch. 9; p. 317, ch. 1, § 18; vol. 6, p. 91, ch. 35; vol. 7, p. 285, ch. 13, § 2; vol. 8, p. 335, ch. 6. Under its charter the college had a representative in the general assembly. Id. vol. 7, p. 529, ch. 1, § 27; vol. 8, p. 317, ch. 1, § 24; it was deprived of this in 1776 by the operation of the constitution. Id. vol. 9, p. 55, ch. 4, § 4; note, p. 114, art. 5. After the Revolution there was vested in it the land adjoining *Williamsburg*, called the *palace* lands, and some other property not required for public uses. Id. vol. 11, p. 406, ch. 34, § 3; and for some time there was appropriated to it a sixth part of the surveyor's fees. Id. p. 310, ch. 4, § 1; the reservation to the college of a part of the surveyor's fees as well as that of certain counties in favor of *Randolph academy* was struck out at the revisal of 1819. See 1 R. C. p. 324, note.

The charter of the college is vested in the case of *Bracken v. The college*, 3 Call 673, 1 Call 161; a case involving the power of the visitors to change the schools and put down professorships.

* The college of *Hampden Sydney* was incorporated by an act of May 1783.—See 11 Hen. Stat. 272, ch. 28, and 1 Munf. 324.

† Concerning *Washington college*, see ante, p. 175, 354, ch. 34, 73.

‡ This section, as reported by the revisors (p. 791,) ends with the word *prescribe*. As it is printed amongst the amendments of the joint committee on revision, these words follow, "*and to be provided for and maintained in the manner mentioned in the four succeeding sections*;" but there are no such words in this chapter as enrolled, nor in the engrossed bill from which the roll was made. See ante, p. 381, note to § 28 of ch. 82.

CHAPTER LXXXIV.

THE INSTITUTION FOR THE DEAF AND DUMB AND THE BLIND.

SEC.

1. Institution incorporated; its powers.
2. } As to appointment of visitors and
3. } president.
4. Duties of board.
5. Its regular and special meetings.
6. Fiscal year of the institution. Annual report to auditor.

SEC.

7. To be one school for deaf mutes and one for the blind. How pupils selected.
8. Annual appropriation for the institution.

§ 1. The asylum established "for the education of the deaf and dumb, and of the blind," by the act of the thirty-first day of March one thousand eight hundred and thirty-eight, shall be continued, and the visitors thereof shall be a corporation by the name of "*the institution for the deaf and dumb and the blind*," and be vested with all the rights and powers now vested in the corporation created by the said act, and be subject to the controul of the general assembly.

1838, p. 31, ch. 19,
§ 1, 6, 7.
1839, p. 205, No. 4.

§ 2. The governor shall annually appoint seven persons as visitors of said institution, who shall be a board for the government thereof. Their term of service shall commence on the first Monday in January in each year, and may continue until their successors shall be appointed. If any vacancy happen in the office of visitor, the governor shall fill it.

1838, p. 31, ch.
19, § 1.

§ 3. The board shall appoint one of the visitors as their president, and in case of his absence, a president *pro tempore*. They shall also appoint a secretary.

Id. § 2.

§ 4. The board shall be charged with the erection, preservation and repair of the buildings of the institution, and the care of its property, and shall direct and do, or cause to be done by officers, professors and agents appointed by them, all things necessary or expedient for promoting the objects of the institution, not inconsistent with law. But for the removal of any professor, the assent of two-thirds of all the visitors shall be necessary.

Id. § 4.

§ 5. The board shall have one annual meeting, and such intermediate meetings as they shall prescribe; the time and place of meeting to be fixed by them. A special meeting may be called at any time by the president or any three members of the board, notice of the time and place of such meeting being given to the other members.

Id. § 5.

§ 6. Each fiscal year of said institution shall end on the thirtieth day of September, to which time the accounts of the institution shall be made up, and the said board shall annually, before the twenty-fifth day of October, deliver to the second auditor a report to the general assembly, shewing the condition of the institution, and its receipts and disbursements for the said year.

1846-7, p. 17, ch.
15, § 6; p. 241,
Res. No. 19.

1838, p. 31, § 3.

§ 7. There shall be in said institution one school for the education of deaf mutes, and another for the education of the blind. The pupils of each shall be selected as the visitors shall prescribe, among such persons as are unable to pay for their maintenance and education, to the extent of the means of the institution, and also from other persons, on such terms for their instruction and support as may be agreed on.

1846-7, p. 16, ch. 15, § 1.

§ 8. There is hereby appropriated out of the public treasury annually, fifteen thousand dollars for the support of said institution, to be paid on the orders of the board of visitors thereof, attested by their secretary and countersigned by the president.

Title 24.

INSANE PERSONS.

CHAPTER LXXXV.

OF LUNATIC ASYLUMS AND THE CARE OF INSANE PERSONS AND THEIR ESTATES.*

SEC.		SEC.	
1.	The asylums continued; their corporate name and directors; and how vacancies in the board filled.	18.	Lunatic not received, committed to jail.
2.		19.	Non-resident lunatic; how disposed of.
3.		20.	May be received in asylum, on contract when there is a vacancy.
4.		21.	Insane slaves; when not received or retained.
5.	President of board and other officers, and executive committee.	22.	Insane persons of the naval service; when received and retained.
6.		23.	Idiots not admitted in an asylum.
7.	Treasurer of the asylum; his duties.	24.	Persons charged with crime; when received.
8.	Fiscal year; annual report of board.	25.	Court or board of directors may deliver lunatic to his friends in certain cases.
9.		26.	When such lunatic may be again proceeded against as such, and how.
10.	Treasurer's accounts and bond to be sent to auditor.	27.	
11.	Examining committee must be unanimous to admit; bond and security given.		
12.	Proceedings before justices to inquire if a person be insane; what the justices do.		
13.			
14.	Officer's duty in executing warrant of justices.		
15.			
16.	How patient is examined and admitted in asylum.		
17.			

* As early as 1769 an act passed for establishing a public hospital at *Williamsburg* for persons of insane and disordered minds. Hen. Stat. vol. 8, p. 378. Subsequent acts on the subject of this hospital and insane persons; Id. p. 594; vol. 9, p. 173, 479; vol. 10, p. 204, 424; vol. 11, p. 167; vol. 12, p. 165, 198, 716; vol. 13, p. 128. Sess. Acts 1801, 2, p. 11, ch. 11. The several acts for the restraint and support of idiots and lunatics, and the preservation and management of their estates, were reduced into one in the Code of 1819, vol. 1, p. 412, ch. 109. In 1825 an act passed for the erection of another hospital. Sess. Acts 1824-5, p. 30, ch. 35; under which act, the hospital was erected at *Staunton*. On the 6th of March 1841, an act passed changing the laws relative to the lunatic asylums. 1840-41, p. 38, ch. 15. From this act and others subsequently passed, the revision in this chapter was chiefly made.

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| 28. | How lunatic, escaping, is arrested and confined. | 44. | Bond of committee. What, clerk to certify to auditor. |
| 29. } | How disposed of when restored to | 45. | Power of committee over person and estate of lunatic; his duty and liability in respect thereto. |
| 30. } | sanity. | 46. | When and where committee may petition for sale of real estate. |
| 31. | Of what county a patient deemed an inhabitant. | 47. } | Proceedings of court on such petition. How proceeds of sale received and applied. |
| 32. | When expenses of lunatic to be paid by asylum or treasury. | 48. } | |
| 33. | Justices when to certify his estate and its profits to court. | 49. | When expenses of lunatic to be paid by committee. |
| 34. } | When court to make provision for support of lunatic, and certify account of expenses to auditor. | 50. | When to be paid by guardian, husband, father or mother of the insane person or his master. |
| 35. } | | 51. | In what cases the asylum or the auditor may release such. |
| 36. } | Allowances for carrying lunatic to and from asylum. | 52. | How such expenses may be recovered. In what court. |
| 37. } | | 53. | No director to be interested in a contract with asylum. |
| 38. } | Allowances to jailors. What proof required. How allowance is apportioned when services are rendered to several. | 54. | Penalties on officers for failure of duty. |
| 39. } | | 55. | The word "lunatic" construed. |
| 40. } | When and in what court a committee of a lunatic may be appointed. | | |
| 41. } | | | |
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| 43. } | | | |

Of the asylums; their directors and treasurer.

§ 1. The lunatic asylums established in the city of *Williamsburg* and in the town of *Staunton*, shall be under the management of boards of directors. The directors in office when this chapter goes into effect, consisting of eleven at each asylum, and their successors, shall constitute such boards. 1840-1, p. 38-9, ch. 15, § 1, 3, 4 1843-4, p. 17, ch. 13.

§ 2. The directors for the asylums at *Williamsburg* and *Staunton* shall respectively continue to be corporations, but instead of their present names, they shall hereafter have the name (the former,) of "*The eastern lunatic asylum*," and (the latter,) of "*The western lunatic asylum*." 1840-41, p. 38, § 1, 34.

§ 3. If any director remove his residence as far as twelve miles from the asylum, it shall vacate his office. Id. § 7.

§ 4. Any vacancy in either board shall be filled by an appointment made by the governor, except that no vacancy in the board at *Staunton* shall be filled until the number be reduced below seven; after which that board shall consist of seven directors. Id. § 1, 3.

§ 5. Each board shall annually choose one of their body to be president, and in his absence a president *pro tempore*. Id. § 2, 6.

§ 6. Each board shall appoint a superintendent, who shall be a physician, and may appoint an executive committee and officers, nurses and attendants, and prescribe their compensation. Any three or more of such directors may examine persons brought to the asylum as lunatics, and order those found to be such, to be received. Id. § 2.

§ 7. A treasurer for each asylum, (who shall not be a director,) shall annually be appointed by the board, who shall give bond in such penalty as shall be approved by the board. He shall receive and keep all money belonging to said asylum, disburse the same under the orders of the board, and settle his accounts as treasurer semi-annually. His draft on the Id. § 5. See ante, p. 88, ch. 13, § 8.

treasury for an appropriation shall be under the order of the board, of which a copy shall accompany the draft; and no such draft shall be allowed by the auditor until all money drawn on account of the next preceding year is duly accounted for.

1840-41, p. 39, § 9. § 8. The fiscal year of each asylum shall end on the thirtieth day of September, annually, and the directors and treasurer shall settle their accounts so as to conform thereto.

1846-7, p. 241, Res. 19. § 9. The board of each asylum shall annually, before the first day of November, report to the governor for the information of the general assembly, the condition of the asylum, and an account of all sums received and disbursed, with a list of the patients, designated by name or otherwise, in the asylum during the preceding year, shewing their age and sex, place of residence and civil condition, the deaths and discharges, and condition when discharged, and any statistics and remarks as to the management of the insane, and the subject of insanity, which in their judgment may be useful.

1840-41, p. 39, § 6. § 10. The board shall transmit to the first auditor the semi-annual accounts of their treasurer, and also a copy of his official bond, as soon as the same may be rendered or executed.

How applications for admission decided on.

Id., § 11.
1845-6, p. 18, ch. 15, § 1. § 11. On an application on behalf of a person for his admission into an asylum, the examining board, if unanimous that he ought to be admitted, may receive him as a patient therein, if the person making the application will execute and deliver an obligation, with sufficient security, (payable to the directors of such asylum by their corporate name aforesaid,) for the payment of such sums of money as may be agreed on between them for the maintenance and cure of such lunatic while in the asylum, and for the expenses of his removal thereto or therefrom, when necessary.

1 R. C. p. 415, ch. 109, § 10.
1840-1, p. 40, § 13. § 12. Any justice who shall suspect any person in his county or corporation to be a lunatic, shall issue his warrant, ordering such person to be brought before him. He and two other justices shall enquire whether such person be a lunatic, and for that purpose summon his physician (if any) and any other witnesses. In addition to any other questions, they shall propound so many of the following as may be applicable to the case: 1. What is the patient's age, and where born? 2. Is he married? If so, how many children has he? 3. What are his habits, occupation, and reputed property? 4. How long since indications of insanity appeared? 5. What were they? 6. Does the disease appear to increase? 7. Are there periodical exacerbations? Any lucid intervals, and of what duration? 8. Is his derangement evinced on one or on several subjects? What are they? 9. What is the supposed cause of his disease? 10. What change is there in his bodily condition since the attack? 11. Has there been a former

attack? When, and of what duration? 12. Has he shown any disposition to commit violence to himself or others? 13. Whether any, and what, restraint has been imposed on him? 14. If any, what connexions of his have been insane? Were his parents or grandparents blood relations? If so, in what degree? 15. Has he had any bodily disease, from suppression of evacuations, eruptions, sores, injuries, or the like, and what is its history? 16. What curative means have been pursued, and their effect, and especially if depleting remedies, and to what extent, have been used?

§ 13. If the said justices decide that the person is a lunatic, and ought to be confined in an asylum, and ascertain that he is a citizen of this state, then, unless some person (to whom the justices in their discretion may deliver such lunatic) will give bond, with sufficient security, to be approved by said justices, payable to the commonwealth, with condition to restrain and take proper care of such lunatic, until the cause of confinement shall cease, or the lunatic is delivered to the sheriff of the county, or sergeant of the corporation, to be proceeded with according to law, the said justices shall order him to be removed to the nearest asylum, and received, if there be room therein, and if not, to the other. 1840-41, p. 40, § 13. 1846-7, p. 17, § 3.

§ 14. The interrogatories to the witnesses, and the answers thereto, shall be in writing, and, together with a written statement, by the justices, of any matter known to them as to the fact of insanity, shall be transmitted by them with the order. 1840-41, p. 40, § 13.

§ 15. The sheriff, or other officer to whom such order of the justices is directed, shall immediately ascertain, by written enquiry, of the superintendent of the asylum first named therein, whether there is a vacancy in such asylum, and if there be none, he shall make a similar enquiry of the other superintendent. Until it is ascertained that there is a vacancy, the patient shall be kept in the jail of the county or corporation. Id. p. 44, § 23.

§ 16. Such officer shall, as soon as he is informed that there is a vacancy, carry the lunatic to the proper asylum. Id. § 29.

§ 17. When such patient arrives at the asylum, the board of directors shall be assembled as soon as may be, and, if they concur in opinion with the justices, shall receive and register him as a patient. Id. p. 41, § 14.

What is done with lunatic not received into asylum; when non-residents and slaves shall not be received therein.

§ 18. If they refuse to receive the lunatic, the officer in whose custody he may be, shall confine him in the jail of the county or corporation in which he was examined, until lawfully discharged or removed therefrom.

§ 19. If it appear to the justices that the person examined by them is a lunatic, and a non-resident of the state, he shall be committed to jail, and if any non-resident be received into 1840-41, p. 48, § 48. 1845-6, p. 18, ch. 15, § 2, 3. 1846-7, p. 17, § 3.

an asylum under such order, or be committed to jail, the board in the one case, and the court to whose jail he may have been committed, in the other, shall, as soon as practicable, cause him to be returned to his friends, or to the proper authorities in the state from which he came.

1840-41, p. 48,
§ 48.
1845-6, p. 18, ch.
15, § 2, 3.
1846-7, p. 17, § 3.

§ 20. No non-resident lunatic shall be admitted or retained in either asylum under any contract with the board except when there is a vacancy therein not applied for on behalf of any person residing in the state. When so admitted, the board may at any time discharge him and require his friends to take charge of him or send him back to his home, and shall do so whenever it may be necessary in order to make room for a person residing in the state.

1845-6, p. 18, ch.
15, § 1.

§ 21. No insane slave shall be received or retained in either asylum so as to exclude any white person residing in this state, and any such slave received in an asylum shall by the board be sent back to the jail of the county or corporation from which he came, or delivered to his master, whenever it may be necessary in order to make room for a white person residing in the state.

As to insane persons of the naval service of the United States.

1848-9, p. 15, ch.
14.

§ 22. Insane persons of the naval service of the *United States*, who may be sent to either asylum by the secretary of the navy under the thirteenth section of the act of congress, approved August the third eighteen hundred and forty-eight, may be received in such asylum; but when it shall become necessary for the purpose of admitting therein insane persons who are citizens of this state, the board shall cause such insane persons of the naval service or marine corps, or so many as may be necessary, to be removed from the asylum and restored to the care of the secretary of the navy.

Idiots.

1840-41, p. 45,
§ 34, 35.

§ 23. If any idiot be sent to or received in any asylum, the board shall order him to be removed to the county or corporation whence he came, and delivered to his committee if he have one, or if not, to the overseers of the poor or any of them who shall give a receipt for him. The costs of such removal shall be paid out of his estate if sufficient, but if not, shall be provided by the said overseers at the charge of their county or corporation.

Person charged with crime.

1836-7, p. 19, ch.
20, § 2; ch. 21,
§ 2.

§ 24. If any person charged with or convicted of crime be found, in the court before which he is so charged or convicted, to be a lunatic, and such court shall order him to be confined

in one of the lunatic asylums, he shall be received and confined if, or so soon as there is a vacancy therein. The sheriff or other officer of the court by which the order is made shall immediately proceed in the manner directed by the fifteenth section of this chapter to ascertain whether such vacancy exists; and until it is ascertained that there is a vacancy, such lunatic shall be kept in the jail of such court.

When persons may be discharged from asylum.

§ 25. Except in the case of a person charged with crime and subject to be tried therefor, or convicted of crime and subject to be punished therefor, when in a condition to be so tried or punished, the board of any asylum, or the court of any county or corporation, may deliver any lunatic confined in such asylum, or the jail of such county or corporation, to any friend who will give bond with security with the condition mentioned in the thirteenth section of this chapter, and where a lunatic, except as aforesaid, is deemed by the superintendent of an asylum both harmless and incurable, the board may deliver him without such bond to any friend who is willing and in the opinion of the board able to take care of him. 1840-41, p. 45, § 15, p. 47, § 41.

§ 26. If the person giving any bond mentioned in the preceding or the thirteenth section of this chapter, or his representative, shall deliver the lunatic therein mentioned to the sheriff of the county or sergeant of the corporation, according to the condition of the bond, such sheriff or sergeant shall carry the lunatic before a justice of his county or corporation, and the same proceedings shall be thereupon had as in the case of a person brought before a justice under his warrant under the twelfth section.

§ 27. If such person or his representative shall desire to carry the lunatic to an asylum, he shall proceed in the manner in which the sheriff or sergeant, to whom a lunatic is delivered under the preceding section, is thereby required to proceed, and shall have the same powers, perform the same duties, and receive the same compensation, with those of a sheriff or sergeant in such case. And the same course shall be pursued when the lunatic arrives at the asylum, as if he had been carried there by a sheriff or other officer as aforesaid.

How lunatic escaping is arrested and again confined; how disposed of when restored to sanity; where patients in asylum are deemed inhabitants.

§ 28. If any lunatic confined in either asylum shall escape, the president of the board, or, if required by any person to do so, any justice of the county where such lunatic may be, shall issue his warrant to the sheriff of such county to arrest and carry him back to the asylum, which warrant the sheriff shall 1846-7, p. 17, ch. 16, § 1, 2.

forthwith execute, and may execute it in any part of the commonwealth.

1836-7, p. 19, ch. 20, § 2; ch. 21, § 2.

§ 29. When any person confined in an asylum, charged with crime and subject to be tried therefor, or convicted of crime, shall be restored to sanity, the board shall give notice thereof to the clerk of the court by whose order he was confined, and deliver him in obedience to the proper precept.

1840-41, p. 45, § 32; p. 47, § 41.

§ 30. When any other person confined in an asylum or jail as a lunatic shall be restored to sanity, the board or the court, as the case may be, shall discharge him and give him a certificate thereof.

Id. p. 45, § 33.

§ 31. Each patient in any asylum shall be deemed an inhabitant of the county or corporation in which he had a legal settlement at the time of his removal to the asylum.

How expenses of lunatics are to be paid.

Id. p. 43, § 23.

§ 32. If not previously paid by individuals, the expense of removing any lunatic to and from any asylum, and of the maintenance and care of him therein, shall be paid out of the treasury of the asylum, and the expense of the maintenance and care of any lunatic in any jail shall be paid out of the public treasury; such expense in either case to be refunded in the manner hereinafter provided.

Id. § 16, 21, 22.

§ 33. The justices or court who shall order a lunatic to be confined in an asylum, shall cause a certificate of his estate, or, if the person be a married woman, or infant who is not an orphan, of the estate of the husband or parent, and also of the probable annual profits of such estate, to be sent to the directors of the asylum, and to the next court for the county or corporation of which the lunatic is an inhabitant.

Id. p. 45, § 36.

§ 34. When any person shall be confined in any jail as a lunatic, the jailor shall certify the fact to the court of the county or corporation at their next ensuing term. The court shall thereupon cause such person to be examined by two disinterested persons, who shall, as soon as may be, report the result thereof. The court shall then make such provision for the maintenance and care of him as his situation may require.

1843-4, p. 18, ch. 15, § 2; ch. 16, § 1.

§ 35. The court in whose jail any lunatic may be confined, shall, when practicable and proper, contract with some fit person for the maintenance and care of such lunatic out of the jail, and make allowance therefor, not exceeding what is authorized for a lunatic confined in jail; the expenses, services and allowances mentioned in this and the two preceding sections, shall be certified to the first auditor for payment.

Allowances to officers, &c., having the care of lunatics.

1840-41 p. 39, 41, § 18, 25.

§ 36. Each officer shall be allowed eight cents per mile, besides tolls and ferriages, for himself and the same for each

guard, both going to and returning from the asylum to carry a lunatic, and the same sum for the lunatic going, and also returning when he is carried from an asylum. But no officer shall be allowed for more than one person as a guard for one lunatic, without a warrant from the examining justices authorizing more than one, nor then, for more than two persons.

§ 37. No officer shall be allowed anything for carrying a lunatic to or from any asylum, either for himself, his guard, or the lunatic, unless he shall have previously ascertained that there was a vacancy therein. 1840-1, p. 39, 41, § 30.

§ 38. The allowance to the jailor for the maintenance and care of a lunatic shall be fixed by the court in whose jail he is confined. No more shall be allowed for his clothing than thirty dollars a year. No such allowance shall be audited and paid unless it appears in the certificate of it that the jailor proved to the court that, immediately after the commitment of the lunatic, and at least once in every two months thereafter, application was made to the boards of directors of both asylums for admission, and that such application was refused for want of room, or that such applications were not continued because the admission of the lunatic had been refused for some other cause than want of room. Id. p. 45, § 35. 1842-3, p. 49, ch. 73, § 1.

§ 39. When the same attendant, nurse or physician, is employed to attend the sick in any jail, as well lunatics as others, the court shall apportion the allowance therefor, so as to ascertain how much is to be allowed for each lunatic. 1832-3, p. 8, ch. 3, § 5. 1842-3, p. 49, ch. 72, § 2.

Committee of a lunatic; his powers and duties.

§ 40. If a person be found to be insane by justices before whom he may be examined, or in a court in which he may be charged with crime, as aforesaid, the court of the county or corporation, of which he is an inhabitant, shall appoint a committee of him. 1840-41, p. 41, § 16; p. 47, § 42, 3.

§ 41. If a person residing in this state, not so found, be suspected to be insane, the court of the county or corporation of which such person is an inhabitant, shall, on the application of any party interested, proceed to examine into his state of mind, and being satisfied that he is insane, shall appoint a committee of him. Id.

§ 42. If a person residing out of the state, but having property therein, be suspected to be insane, the court of the county or corporation wherein the said property or greater part of it is, shall, upon like application, and being satisfied that he is insane, appoint a committee of him. Id.

§ 43. The circuit courts shall have concurrent jurisdiction with the county and corporation courts, respectively, in the appointments of committees.

§ 44. The court making such appointment, shall take from such committee a bond in such penalty as it shall deem sufficient; and in the case of a lunatic sent to an asylum or committed Id. p. 41, § 17; p. 42, § 19. Ante, p. 88, ch. 14, § 8.

to jail, the clerk of the court shall, within one month thereafter, transmit to the first auditor a certified copy of such bond, and of any order of the court in relation to such lunatic or his estate; and in one month after such lunatic may be admitted into an asylum, the clerk shall send copies of the said bond and orders to the board of directors thereof.

1840-41, p. 41,
§ 16.

6 Rand. 584.

§ 45. The committee of an insane person shall be entitled to the custody and control of his person, (when he resides in the state, and is not confined in an asylum or jail,) shall take possession of his estate, and may sue and be sued in respect thereto, and for the recovery of debts due to or from the insane person. He shall take care of and preserve such estate, and manage it to the best advantage; shall apply the personal estate, or so much as may be necessary, to the payment of the debts of such insane person, and the rents and profits of the residue of his estate, real and personal, and the residue of the personal estate, or so much as may be necessary, to the maintenance of such insane person, and of his family, if any; and shall surrender the estate, or so much as he may be accountable for, to such insane person, in case he shall be restored to sanity, or the real estate to his heirs or devisees, and the personal estate to his executors or administrators, in case of his death without having been so restored to sanity.

When and how real estate of insane person may be sold, &c.

§ 46. If the personal estate of such insane person be insufficient for the discharge of his debts, or if the personal estate, or residue thereof, after payment of the debts, and the rents and profits of his real estate, be insufficient for his maintenance and that of his family, if any, the committee of his estate may petition the court by which he was appointed, for authority to mortgage, lease or sell so much of the real estate of such insane person as may be necessary for the purposes aforesaid, or any of them; setting forth in the petition the particulars and amount of the estate, real and personal, the application which may have been made of any personal estate, and an account of the debts and demands existing against the estate.

§ 47. On the presenting of such petition, it shall be referred to a commissioner in chancery, to enquire into and report upon the matters therein contained; whose duty it shall be to make such enquiry, to hear all parties interested in such real estate, and to report thereon with all convenient speed.

§ 48. If, upon the coming in of the report and examination of the matter, it shall appear to the court to be proper, an order shall be entered for the mortgage, leasing or sale (on such terms and conditions as the court may deem proper,) of so much of the said real estate as may be necessary. But no conveyance shall be executed until the sale shall have been confirmed by the court. The proceeds of sale shall be secured and applied under the order of the court.

When, and to and by whom, expenses of lunatic to be paid.

§ 49. There shall be paid out of the estate of any insane person, to the treasurer of the asylum in which he may be or has been confined, all the expenses of his removal to or from the asylum, which may have been paid out of its funds, and of his maintenance and care therein; and into the public treasury all the expenses paid thereout. The committee of such insane person, out of his estate, shall pay such expenses of removal and for one year's support in the asylum, at the end of the first year of his confinement, and the amount necessary for his annual support afterwards, at the end of each year, and shall pay into the public treasury the said expenses which may have been paid out of the same, within three months after they shall have been so paid out. All such expenses not paid by the committee, shall be paid by such insane person if he be restored to sanity, or by his representatives out of his estate, real or personal, whether in possession at the time of his becoming insane, or acquired at any time afterwards.

1840-41, p. 41, 2,
§ 18, 27.

§ 50. The expenses of an insane infant, (not paid by his committee,) married woman or slave, incurred in his or her removal, maintenance or care, shall be paid, within the time specified in the preceding section, to the treasurer of the asylum or into the public treasury, as the case may be, by the guardian, if there be one who has sufficient funds in hands, or if no guardian, and there be not sufficient estate of such infant, then by his father, or, if no father, by his mother, by the husband of an insane woman and by the master of an insane slave.

Id § 21, 22.

When and by whom claim for expenses may be released or recovered.

§ 51. The directors of either asylum, on behalf of such asylum, and the first auditor on behalf of the commonwealth, may respectively, in their discretion, release the whole or any part of any claim of such asylum or the commonwealth, for the expenses attending the removal, maintenance or care of a lunatic, if he have a family dependent on his estate for support, or if the claim be against the father, mother or husband of the lunatic.

Id. 46, § 38.

§ 52. Any money for which any person is liable to an asylum or to the commonwealth on account of a lunatic, may be recovered, with interest from the time it ought to have been paid, by warrant, suit or motion, in the name of the asylum or the commonwealth, as the case may be; when the suit or motion is brought by the asylum, it may be in any court of the county or corporation in which the asylum is, or in which the defendant resides; and in case of a motion, thirty days notice thereof shall be given.

Id. § 16, 19, 37
to 39.

*General provisions.*1840-41, p. 48,
§ 47.

§ 53. No director of a lunatic asylum shall be personally interested in any contract in relation to the said asylum, or its support.

Id. p. 42, § 20.

§ 54. If any director of an asylum, justice, clerk of a court, sheriff or other officer, shall fail to perform any duty required of him in this chapter, or shall offend against any prohibition contained herein, he shall forfeit not less than fifty, nor more than one hundred dollars.

§ 55. The word "lunatic," whenever it occurs in this chapter, shall be construed to include every insane person who is not an idiot.

Title 25.

CHAPTER LXXXVI.

PUBLIC HEALTH.

SEC.

1. How hospitals established and regulated.
2. Cost of hospitals; how provided for.
3. Penalty for inoculation for small pox.
4. How person with infectious disease may be removed to hospital.
5. } Provisions to prevent spread of
6. } disease.
7. How health regulations may be enforced.
8. Expenses of removing infected persons and things; how paid.
9. } How vaccine agent appointed; his
10. } duty and compensation.
11. }
12. Quarantine ground; how established.

SEC.

13. } Quarantine rules; how prescribed;
14. } penalty for their violation.
15. Vessels and cargo if infected to be put in quarantine.
16. Penalty on master of vessel or other person refusing to answer inquiries.
17. Master of vessel to deliver bills of health, &c.; penalty for failure.
18. Person escaping from quarantine; how arrested.
19. Travellers by land; when put into quarantine, &c.
20. How expenses of quarantine paid.
21. Construction of words, "town" and "council."

O hospitals.

1831-2, p. 25, ch.
25, § 2.
1841-2, p. 133, ch.
197, § 33.

§ 1. The council of any town, or the court of any county may establish in such county, or in or near such town, hospitals, which shall be subject to regulations, not contrary to law, made by such council or court.

§ 2. The cost of establishing and maintaining such hospitals shall be chargeable to the town or county, as the case may be.

Of dangerous diseases.

2, R. C. p. 291, § 8.

§ 3. Any person who shall inoculate himself or another, or suffer himself to be inoculated, for the small pox, unless at a

hospital established by law, shall forfeit for every such offence not exceeding three hundred dollars. And if any person shall bring into this state the small pox or any variolous matter thereof, with the intent of propagating such disease, he shall forfeit one thousand dollars.

§ 4. The council or health officer of a town, or any two justices of a county, may cause any person in said town or county, infected with any infectious disease dangerous to the public health, to be removed to a hospital or other place of reception for the infected, unless such person be sick in his own place of residence, or cannot be removed without danger to his life. 2 R. C. p. 291, 2, § 5, 8, 11.

§ 5. If a person, who has not had the small pox or cow pox, go into a house in which any one is infected with the small pox, and return thence, a justice may cause such person to be carried to the nearest hospital where the disease is, and to remain there until discharged on the certificate of the physician of the hospital, that he may depart without danger of spreading the contagion. Id. 1831-2, p. 25, ch. 25, § 1.

§ 6. If any person who knows himself to be infected with a dangerous infectious disease, or who has recently had such disease, and has not had his person and clothes so cleansed as to be free from the infection, go into the company of any one who is liable to take the infection, or fail to retire from a public road or street on the approach of a passenger, without warning such passenger of his being so infected, he shall forfeit ten dollars for each offence. Such penalty shall be paid, if the offender be a married woman, by her husband; if an infant, by his parent or guardian; and if a slave, by his master. 2 R. C. p. 290, § 3.

§ 7. When the health officer of any town shall make complaint, under oath, that there is good cause of suspicion or belief that there is on any lot, or in any house in such town, or in any vessel arriving at the port thereof, any nuisance, source of filth, or cause of sickness, proper to be destroyed or removed, or one or more persons not in his own place of residence infected with contagious disease, and that he has been refused admittance into such lot, building, or vessel, any justice of the corporation, or of the county in which such town is, may issue his warrant to the sheriff of the county, sergeant of the corporation, or any constable of either, requiring him to enter such lot, house, or vessel, and, under the direction of such health officer, to remove such infected person, or remove or destroy any such nuisance, source of filth or cause of sickness.

§ 8. All expenses incurred for the removal of any person infected with a dangerous disease, and for maintaining, nursing, and curing him, or incurred in entering any lot, house, or vessel, suspected of having persons or things infected with a dangerous infectious disease therein, and of removing them to a hospital or other place of reception therefor, shall be paid 2 R. C. p. 291, § 5. 1831-2, p. 25, § 1.

by such infected person, or by the owner of such lot, house, or vessel, as the case may be; or if such person or owner be a married woman, by her husband; if an infant, by his parent or guardian; and if a slave, by his owner. But if they be not so paid, they shall be chargeable to the town or county in which they were incurred.

Vaccine agent.

1831-2, p. 25, ch.
25, § 3.

§ 9. The governor shall annually appoint and contract with some fit agent, who shall furnish, by mail or otherwise, every citizen of this state, who may apply therefor, with genuine vaccine matter, and directions how to use it, free of charge.

Id.

§ 10. The said agent shall, immediately on his appointment, give notice, by advertisement in two newspapers printed in the city of *Richmond*, that he is ready to furnish the genuine vaccine matter, without charge, to any citizen of the state.

Id.

§ 11. The sum of five hundred dollars annually, is hereby appropriated for the payment of such agent. The same, or so much thereof as may be required, shall be paid semi-annually, on the order of the governor, when he shall be satisfied that the agent has faithfully complied with his contract and duty as agent, to the time of such payment.

Quarantine.

§ 12. The council of any town may establish a quarantine ground for such town, and the councils of any two or more towns may establish a quarantine ground for their common use; but if the place fixed on for such quarantine ground be without the limits of a town, the assent of the court of the county to its use must first be obtained.

2 R. C. p. 294,
§ 4, 7.
1848-9, p. 81, ch.
127.

§ 13. The council of any such town may, from time to time, prescribe the quarantine to be performed by all vessels arriving within the harbour or vicinity of such town, and regulations therefor, not contrary to law.

Id.

§ 14. Such regulations may extend to all persons, goods, and effects arriving in such vessels, and to all persons who may go on board of the same. If any person violate such regulations, after notice thereof shall have been given by publishing the same in some newspaper printed in the town, or where there is none such, by posting it up in some public place therein, he shall forfeit not less than five, nor more than five hundred dollars.

§ 15. The health officer in such town may cause any vessel arriving in its port or vicinity, if the vessel or its cargo be, in his opinion, so foul or infected as to endanger the public health, to be removed to the quarantine ground, or other proper place, and to be purified, and cause all persons arriving in or going on board of such vessel, or handling such cargo, to be removed to a hospital.

§ 16. If any master, seaman or passenger, belonging to a vessel supposed to have any infection on board, or from a port where any dangerous infectious disease prevails, shall refuse to answer on oath such inquiries as may be made by any health officer or other authorized person, relating to such infection or disease, he shall forfeit not less than one hundred, nor more than five hundred dollars. ^{2 R. C. p. 295-6, § 5, 7.}

§ 17. The master of a vessel ordered to perform quarantine, shall deliver to the officer appointed to see it performed, his bills of health and manifests, and his log book and journal. If he fail to do so, or to repair in proper time, after notice, to the quarantine ground, or shall depart thence without authority to do so, he shall forfeit not more than five hundred dollars. ^{Id. § 8.}

§ 18. If any person ordered to perform quarantine shall escape, a justice, on complaint thereof under oath, may issue his warrant to a sheriff, sergeant or constable, commanding him to arrest such fugitive and deliver him to the custody of the officers of quarantine. Any such person attempting to escape may be forcibly detained at the place of quarantine by such officers. ^{Id. § 9.}

§ 19. Any person coming into any town by land, from a place infected with a dangerous infectious disease, may be compelled to perform quarantine by the health officer, and restrained from travelling, until discharged. Any such person who shall, before he is discharged, travel in this state, unless it be to return by the most direct route to the state from which he came, shall forfeit one hundred dollars. ^{Id. p. 297, § 15, 16.}

§ 20. All expenses incurred by any town on account of any person, vessel, or goods, under quarantine regulations, shall be paid or reimbursed to it by such person, or the owner of such vessel or goods, respectively, and the said town may detain any such vessel or goods until such expenses are paid. ^{Id. § 13.}

Construction of certain words.

§ 21. The word "town," wherever it occurs in this chapter, shall include a city, and the word "council" shall include any body authorized to make ordinances for a town.

Title 26.

INSPECTIONS, WEIGHTS AND MEASURES.

CHAP. 87. Of the inspection of tobacco.

88. Of the inspection of flour and certain other commodities.

89. Of weights and measures.

90. Of weighing and keeping live stock.

CHAPTER LXXXVII.

OF THE INSPECTION OF TOBACCO.*

SEC.		SEC.	
1.	} Of tobacco warehouses. Where established, and how discontinued.	23.	When stemmed tobacco or tobacco in hogsheads too large, to be refused.
2.		24.	} Tobacco of other states, how marked. Loose tobacco to be inspected.
3.	} To be rented to inspectors; at what rates.	25.	
4.		26.	Receipt given, if required, for uninspected tobacco.
5.		27.	Penalty for delivery to any one but owner.
6.	} How warehouses repaired.	28.	} Manifests to be given. Notes and receipts to be printed; penalty for failure.
7.		29.	
8.	} Of inspectors of tobacco; how many nominated to and appointed by governor.	30.	} All tobacco to be secured at night. Inspectors to keep sufficient hands.
9.		31.	
10.	} Governor to fill vacancies, or appoint in failure of nomination.	32.	} Tobacco inspected may be removed to another warehouse. Inspectors required to re-inspect and weigh tobacco; when.
11.		33.	
12.	} Term of office and bonds of inspectors.	34.	} How owner of lost note or receipt to proceed. The bond to be given may be assigned to any one producing original note.
13.		35.	
14.	} Their general duties; when to attend warehouses; penalty for not attending.	36.	} Rights of real owner of tobacco against inspector or other person.
15.		37.	
16.	} To enter names of owners and marks of tobacco. How tobacco to be examined by them. How weight ascertained.		
17.			
18.	} Receipt or note for tobacco to be given.		
19.			
20.	} How tobacco not passed is to be marked; penalty for failure.		
21.			
22.			

* The ancient statutes in relation to the prices, and for improving the quality, of tobacco are very numerous. In a letter of the 26th of March, 1628, from the general assembly, in answer to one from the king, they propose to contract for seven years with the king, for all their tobacco of good quality, at *three shillings and sixpence* per pound, delivered here, or *four shillings* if delivered in London, without their paying customs; they state that they had ordered a proclamation to be made, requiring the planters to set their plants $4\frac{1}{2}$ feet apart and to gather twelve leaves only from a plant, instead of 25 or 30 as before. 1 Hen. Stat. 134, 5. The quantity to be planted by a family was afterwards limited. Id. 141, 2, 152, 164; and in 1629, measures were taken to prevent the exportation of bad tobacco and have it burnt. Id. 152. In a note to ch. 220 in the 2d volume of the Code of 1819, p. 134, Mr. Leigh has referred to *all the revised acts* on the subject, and the principal laws from which the revisals were taken. By the acts of 1631, 2, goods were not to be bought in exchange for tobacco under the rate of sixpence per pound for tobacco, as the goods first cost in *England*. Id. 162, 188, and in 1632, 3, stores or warehouses were established where the tobacco was to be re-packed, viewed and tried. Id. 204. Tobacco was in fact a currency in *Virginia* for a long period of time. As late as 1787, taxes might be discharged with notes for inspected tobacco; an equitable price being fixed on the tobacco, having regard to the selling price thereof at each warehouse. 12 Hen. Stat. p. 455. Persons chargeable with fees to clerks might discharge the same in 1790, either in tobacco or specie at the rate of 10 shillings and 5 pence per hundred upon the gross tobacco. 13 Hen. Stat. p. 114; and in 1791 at a penny and a farthing for each pound of tobacco. Id. 260.

SEC.		SEC.	
38.	} Penalty for refusing tobacco to owners or delivering them wrong tobacco.	63.	When other persons liable and when wooden chimney near a warehouse may be pulled down.
39.		65.	No unmanufactured tobacco exported or put on board a vessel to be exported until inspected, &c. penalty therefor.
40.	Inspectors to keep books; what to be entered therein.	66.	} How tobacco put on board a vessel in violation of law may be seized. What to be done with it.
41.	They prohibited from trading in tobacco.	67.	
42.	Inspectors not liable for defects of tobacco delivered.	68.	} Penalty for resisting warrant to seize it. How penalty appropriated.
43.	} Salaries of inspectors; how paid.	69.	
44.		70.	Tobacco in bulk or parcels not be taken in a boat from one part of state to another,
45.	} What to be paid to inspectors besides rent and storage.	71.	What to be done with, if put on board without knowledge of owner.
49.		72.	Courts to appoint commissioners to examine warehouses.
50.	All sums to be paid inspectors before delivery of tobacco.	73.	} Their duties.
51.	Compensation of additional inspectors.	74.	
52.	} Waste and sample tobacco to be sold for use of the state; penalty for failure.	75.	} Their compensation and penalty on them for neglect of duty.
53.		76.	
54.	Tobacco remaining in a warehouse three years to be sold for the state.	77.	Inspectors may be removed from office by governor for neglect or misconduct.
55.	} How and when inspectors to account, and penalty for failure.	} Penalty for false brand or marks on manufactured tobacco; no other section applicable to such tobacco.	}
56.			
57.			
58.	} When the state is liable for tobacco burnt.	78.	}
59.		79.	
60.	} When inspector is so liable.	80.	Tobacco trade in <i>Alexandria</i> to be governed by act of 1849.
61.			
62.			

Of tobacco warehouses; the rents and repairs thereof.

§ 1. The inspection and storage of unmanufactured crop tobacco, whether stemmed or unstemmed, shall be continued at the following places: 2 R. C. p. 134, ch. 220, § 2.

In the city of *Richmond*, at the public warehouses belonging to the state, and at *Shockoe*, *Seabrook's*, and *Roanoke* warehouses.

In the town of *Petersburg*, at the *Centre* warehouse.

In the county of *Dinwiddie*, at *Moore's*, *The Oaks*, and *West-hill* warehouses.

In the county of *Campbell*, at *Friends'*, *Liberty*, *Lynch's*, *Martin's*, and *Planters'* warehouses.

In the county of *Prince Edward*, at the *Farmville* and *Randolph* warehouses.

In the county of *Mecklenburg*, at *Royster's*, and *Venable's* warehouses.

In the county of *Buckingham*, at *Curdsville* warehouse.

In the county of *Cumberland*, at *Thornton's* warehouse.

In the county of *Albemarle*, at *Howardsville* warehouse.

In the county of *Nelson*, at *Tye river* warehouse.

In the county of *Pittsylvania*, at *Pannill's* and *Linn's* warehouses.

1842-3, p. 87, ch. 121.
1844-5, p. 100, ch. 117.
1845-6, p. 103, ch. 135.

2 R. C. p. 137, § 3.
3 Leigh 241. § 2. If, for three years successively, there shall not be received, at any warehouse for the inspection of tobacco, a sufficient quantity of tobacco to pay the inspectors' salaries, and other charges of inspection, the same shall thenceforth be discontinued, unless there be two or more warehouses in that condition in the same county, in which case the warehouse which shall have received the smallest quantity of tobacco, during the three years, shall be discontinued.

2 R. C. p. 138, § 7. § 3. The proprietor of any warehouse for the inspection of tobacco, shall let the same to the inspectors at the rent fixed by law. If he refuse to do so, he shall forfeit fifteen hundred dollars.

1 R. C. p. 138, § 7.
1822-3, p. 24, ch. 26, § 2.
1832-3, p. 51, ch. 79.
1836-7, p. 52, ch. 76. § 4. For each hogshead of tobacco received, inspected, stored or delivered out at any such warehouse, rent shall be paid to the inspectors, at the following rates, to wit: sixty cents if the warehouse be in, and fifty cents if it be not in *Richmond, Alexandria, Lynchburg, Farmville, or Clarkesville*, which rent shall be for the exclusive use of the proprietors of the warehouse, if it be built of brick or stone, with fire-proof covering, but if not so built, ten cents out of every such sixty or fifty cents shall be for the state.

2 R. C. p. 143, § 15.
1822-3, p. 25, ch. 26, § 3. § 5. There shall also be paid to the inspectors, at any warehouse, for the use of the proprietor, for all tobacco lying therein more than twelve months, at the rate of five cents per month for each hogshead.

2 R. C. p. 138, § 7.
1822-3, p. 26, ch. 26, § 10.
1825-6, p. 14, ch. 14, § 5. § 6. If complaint on oath be made to the court of any county or corporation that any warehouse therein (not belonging to the state) needs repairs, said court shall cause the proprietor or his guardian (if he be an infant) to be summoned, to shew cause why such repairs should not be made, and on the return of the summons executed, shall decide what repairs ought to be made, and require the owner to make them within a specified time; and unless he shall comply with such order, the court may appoint commissioners to cause such repairs to be made; the expense whereof, including such compensation to the commissioners as it may allow, shall be paid by the inspectors out of the rents of said warehouse.

Id. § 7. The preceding section shall not apply to any warehouse, the receipts whereof at the time shall not be sufficient to pay the salaries of the inspectors, and other legal charges.

§ 8. The governor may require the inspectors of the public warehouses, belonging to the state, to have all proper repairs of said warehouses made, the expense whereof, on being allowed by the governor, shall be paid by the inspectors out of the rents received by them for the use of the state.

Inspectors of tobacco; how appointed; their bonds.

2 R. C. p. 144, § 19; p. 146, § 24; p. 165, § 58.
1822-3, p. 24, ch. 26, § 1. § 9. The court of each county wherein there is such a warehouse (except the public warehouse in the city of *Richmond*) shall annually, in August or September, nominate to the go-

vernor for every such warehouse, four persons for inspectors, unless where two warehouses under one inspection may be in different counties, in which case the court of each county shall nominate two for such inspection. The hustings court in the city of *Richmond* shall annually, in August or September, nominate to the governor, for the public warehouse in the said city, four persons for inspectors.

§ 10. Out of the four persons so nominated, the governor shall appoint two, as first and second inspector; and shall also appoint one to be an additional inspector; and may also appoint the other as second additional inspector. 2 R. C. 5. 144, § 19; p. 146, § 24; p. 165, § 58. 1822-3, p. 24, ch. 26, § 1.

§ 11. In case of a vacancy in the office of inspector, the governor may appoint any person named in the last nomination to fill such vacancy until the next annual appointment; but if the persons named in such nomination will not accept the office, or shall be unable to give the security required, or shall be deemed by the governor unfit, or shall be absent from the state, the governor may appoint any other person to fill the vacancy. Id.

§ 12. If any such court fail to make a nomination for any warehouse, the governor shall appoint inspectors therefor. Id.

§ 13. The term of office of each inspector shall be one year, but he may continue to act until his successor is qualified. No inspector shall be re-appointed until he shall have obtained his quietus from the treasury. 2 R. C. p. 145, § 20.

§ 14. The court having the power of nominating inspectors to any warehouse, shall take a bond from every person appointed inspector of such warehouse. Such bond shall, if the warehouse belong to the state, be in the penalty of ten thousand dollars, and in any other case four thousand dollars. Within thirty days after the execution of any such bond, the clerk of the court in which it is given shall transmit a copy to the first auditor. If he fail to do so, he shall forfeit one hundred dollars. Id. p. 146, 7, § 25, 26; p. 165, § 58. 1835-6, p. 53, ch. 77, § 3. See ante, p. 88, ch. 13, § 8. 4 Munf. 263.

Duties of inspectors.

§ 15. New inspectors appointed at any such warehouse, shall give to those whom they succeed a receipt, containing the numbers, marks, and gross, tare and nett weight of every hogshead or cask of tobacco which shall be then at the warehouse. They shall be thereupon chargeable with the delivery of such hogsheads and casks of tobacco, but in no way accountable for any loss of weight or defect of quality of said tobacco, which may have occurred without their fault. 2 R. C. p. 145, § 21.

§ 16. The said inspectors shall attend their warehouses, respectively, unless in case of sickness or other necessary cause of absence, that is to say, the said first and second inspector of each warehouse, every day that their services may be required, except Sundays, from eight o'clock in the morning until four in the evening, from the first day of April to the first 2 R. C. p. 147, and 165, § 27, 28, 60. 1822-3, p. 24, § 6.

day of October, and from nine o'clock in the morning until four in the evening, during the rest of the year, for the purpose of inspecting tobacco. And each additional inspector shall attend during the same hours, whenever his services shall be required in consequence of the disagreement in opinion of the other inspectors as to the quality of tobacco, or in consequence of the absence of either of the other inspectors, or to inspect tobacco belonging to one of them, in which case alone the said additional inspectors shall be authorized to act. And the said warehouses shall be kept open and attended by the inspectors or their agents, for the receiving and delivering of tobacco from sunrise to sunset, every day of the year, except Sunday.

2 R. C. p. 147 and
165, § 27, 28, 60.

§ 17. Every inspector neglecting to attend as aforesaid, shall forfeit to the party injured one dollar for every case of such neglect.

Id. § 28, 41.
1846-7, p. 68, ch.
81, § 1.

§ 18. The inspectors shall enter in a book, to be kept for that purpose, the marks and names of the owners of all tobacco brought to their respective warehouses for inspection, and shall inspect the same in turn, if required by the owner.

Id.

§ 19. They shall uncase and break every hogshead or cask brought to be inspected, and if they shall agree that the same is good, sound, well conditioned, merchantable, and clear of trash, it shall be weighed, and the said hogshead or cask measured, and if found of the dimensions authorized by law, it shall be marked or branded in the presence of the inspectors, or one of them, with the name of the warehouse, the tare of the hogshead or cask, and the quantity of nett tobacco therein. The nett weight shall be ascertained by weighing the hogshead or cask before it is uncased, and deducting therefrom the weight of the hogshead or cask and eight pounds for the sample.

Id.

§ 20. The inspectors shall, thereupon give a receipt or note for every such hogshead or cask, if required by the owner, in the following form:

RIVER.

WAREHOUSE, the day of ,

one thousand eight hundred and .

		STEMMED.			LEAF.			Received of hogsheads of crop to- bacco; marks, numbers, weights and species, as per margin; to be de- livered to the said or his order, on demand Witness our hands.
Marks.	No.	Gross.	Tare.	Nett.	Gross.	Tare.	Nett.	
PASSED.								

As to refused tobacco; dimensions of hogsheads.

2 R. C. p. 150,
§ 31, 32.

§ 21. Where any tobacco received at any warehouse for inspection shall be found to be not good, sound, well conditioned,

merchantable and clear of trash, the inspectors, in addition to the marks required as to passed tobacco, shall mark or brand on each head, and on two sides of the hogshead or cask, the word "*refused*" in letters not less than three inches in length; and, if required by the owner, shall also give a receipt in the form prescribed for passed tobacco, except that the word "*refused*" shall be plainly written on the face thereof, instead of the word "*passed*." If the tobacco be of good quality, and only too high in order for shipment, then the inspector shall not mark the hogshead "*refused*," but shall mark both ends of the hogshead with the words "*too high*." If the tobacco be lugs, the word "*lugs*" shall in like manner be written on both ends of the hogshead.

§ 22. Any inspector who shall omit to brand or mark any tobacco which is refused as aforesaid, shall for every such offence forfeit ten dollars. And any person who shall, with a fraudulent intent, alter, obliterate, or remove any such mark or brand, or shift the contents of such hogshead or cask, or cause the same to be done, shall for every such offence forfeit fifty dollars.

§ 23. All stemmed tobacco not laid straight, and whether packed loose or in bundles, shall be accounted unlawful tobacco and refused; and no tobacco packed in hogsheads exceeding fifty-four inches in the length of the stave and thirty-eight inches at the head within the crow, making an allowance for prizing of not more than two inches above the gauge in the prizing head, shall be passed. If any inspector shall pass any such tobacco, he shall forfeit five dollars for each hogshead.

Tobacco of other states; loose and uninspected tobacco.

§ 24. Every hogshead, bale, box or cask of tobacco, grown in any state west of *Virginia*, and inspected in this state, shall be marked or branded "*Western Tobacco*," in like manner with, and in addition to, the other marks of inspection before prescribed. And all notes or receipts, and manifests issued by the inspectors for any such tobacco, shall have the same words plainly written on the face thereof. Any inspector who shall fail so to mark or brand and describe such tobacco, shall for every such failure forfeit twenty dollars.

§ 25. The inspectors shall receive, inspect and weigh all loose tobacco brought to their warehouses for inspection, and give certificates for the same, and issue manifests thereof when delivered out.

§ 26. The inspectors shall, immediately on the delivering of any tobacco at their warehouse, if required by the person bringing the same, give a receipt therefor, describing the same as uninspected tobacco. Any inspector refusing to do so shall pay the owner of such tobacco four dollars.

Penalty for delivering to any person but owner.

2 R. C. p. 156,
§ 43.
See post. § 39.

§ 27. Any inspector who shall deliver from his warehouse any tobacco without an order from the owner, shall, for every hogshead, cask or parcel of tobacco so delivered, forfeit to the owner one hundred and fifty dollars.

Of manifests, receipts and notes for tobacco; to be printed.

2 R. C. p. 163, 174,
§ 54, 84.

§ 28. The inspectors shall give, with all tobacco delivered out of their warehouses, if required by the owner, a manifest or list of the same, described, as in the notes, receipts or certificates given therefor when the same was inspected, or in the manifests thereof when received from another warehouse.

Id. p. 148, § 28.

§ 29. All notes or receipts and manifests shall be on printed blanks and the date inserted at full length.

Id.

§ 30. Every inspector who shall issue a note, receipt or manifest in any other manner than is prescribed by law, shall forfeit three hundred dollars.

Tobacco secured at night; inspectors to keep sufficient hands.

Id. § 29.

§ 31. All tobacco inspected during the day shall be stored away and secured at night. Any inspector who shall fail herein, shall forfeit ten dollars for each hogshead or parcel of tobacco not so stored away and secured.

Id. p. 166, § 65.
1822-3, p. 25. ch.
26, § 6.

1 H. & M. 479.

§ 32. Inspectors shall furnish a sufficient number of hands at their warehouses for storing, delivering, uncasing and cooping all tobacco received therein, and putting in good order such hogsheads or casks of tobacco as may be in bad order when received; and all hogsheads or casks received by them in good order, and all such as they shall charge for having put in good order, shall be delivered by them in the like good order.

Inspected tobacco may be received and stored in any other warehouse.

2 R. C. p. 163, 166,
§ 54, 64.

§ 33. The owner of any inspected tobacco, on the same being delivered to him, may send it to be stored at any other warehouse established by law, and if there be room therein, the inspectors thereof shall be bound to receive it on the terms prescribed by law. And if more tobacco shall be inspected at any warehouse than can be stored therein, it may be stored in any other warehouse on the same terms.

Id. § 55.

§ 34. The inspectors of any warehouse, at the request of the owner of inspected tobacco so stored therein, shall re-inspect and weigh it, and if found to be damaged, or that any part of it has been embezzled, it shall be so entered on their books, and shall be subject to the order of the owner.

Lost note or receipt to be renewed.

§ 35. If any person claiming in his own right or as a personal representative, to be entitled to tobacco stored in a warehouse, shall make oath to the number and date of the tobacco receipt or note given therefor, to whom the same was payable, and for what quantity of tobacco it was given, that it has been lost or destroyed, and that he was and still is entitled to receive the tobacco mentioned therein, and shall deliver to the inspectors a certificate of his having taken such oath, and shall advertise the loss of such note or receipt at the courthouse of the county or corporation in which said tobacco was stored, at the warehouse itself and also in some newspaper printed near thereto for four weeks successively, and shall moreover give bond, with sufficient surety, to the inspectors, in a penalty double the supposed value of the tobacco so claimed, with a condition to indemnify the person who may be the real and *bona fide* holder of the original receipt, and who may thereafter produce the same or prove his right to said tobacco, then the inspectors at said warehouse shall grant a duplicate to the person taking such oath and giving such bond. ^{2 R. C. p. 157, 8, § 45, 46.}

§ 36. The bond so taken shall be assigned by the inspectors ^{Id.} taking the same to any person who produces the original receipt or note, and thereupon the said inspectors shall be exonerated from liability to the owner of said tobacco by virtue of such original receipt or note.

§ 37. The two preceding sections shall not prevent the real ^{Id.} owner of said tobacco from making the inspectors liable if the security taken by them was not sufficient at the time it was taken, or from recovering the tobacco from the person who may have obtained such duplicate.

Penalty on inspectors for refusing to deliver to owner or delivering him wrong tobacco.

§ 38. If any inspector shall deliver out, in discharge of any note or receipt, other tobacco than that for which the same was issued, or shall alter or shift any tobacco from the hogshead or cask in which the same was received, except in a case expressly authorized by law, he shall forfeit for every such offence one hundred and fifty dollars. ^{Id. p. 158, § 47.}

§ 39. If any inspector shall fail to deliver any tobacco, when it is demanded, to the owner thereof, he shall forfeit to such owner double the value of such tobacco. ^{Id. 1 Wash. 217. 2 H. & M. 213, 566. 1 Rand. 328.}

Books to be kept by inspectors; they prohibited from trading in tobacco; not liable for defects of tobacco delivered out.

§ 40. The inspectors shall provide and keep books, in which they shall enter the numbers, weight, marks and owners' names, of all tobacco received, inspected or delivered out by ^{2 R. C. p. 148, 151, 165, § 28, 32, 61.}

them, as well at the time the same was received, as at the time the same was inspected or delivered out, and note the state and condition of each hogshead or cask; and in which also they shall keep fair and true accounts of all money received by them to the use of the proprietors of the warehouses or of the commonwealth, or for any tobacco sold by them in pursuance of law.

2 R. C. p. 153, § 37.

§ 41. If any inspector shall directly or indirectly buy, or sell, stem or manufacture, any tobacco inspected at his warehouse, (other than tobacco grown on his own plantation,) he shall forfeit ten dollars for every hundred pounds of tobacco so bought, sold, stemmed or manufactured. But this section shall not prohibit any inspector from acting as crier or agent for any owner in selling tobacco by auction at his warehouse.

Id. p. 145, § 21.

§ 42. If any hogshead or cask of tobacco shall be delivered out by any inspectors and received by the owner, such inspectors from the time of such delivery shall be discharged from any liability for the said tobacco being unsound or unmerchantable, or of less quantity than the notes or receipts given for the same specify.

Salaries of inspectors; and other charges for inspection.

2 R. C. p. 160, 165, § 50, 59.

1819-20, p. 93, § 1.

1820-21, p. 109, § 1.

1822-3, p. 24, § 5.

1833-4, p. 261, § 2.

1835-6, p. 54, ch. 80.

1841-2, p. 87, § 2.

1842-3, p. 86, ch. 121.

1844-5, p. 100, ch. 117.

1845-6, p. 103, ch. 1356, 7.

1846, 7, p. 47, § 28.

2 R. C. p. 161, § 51.

1843-4, p. 86.

1845-6, p. 103, ch. 125.

§ 43. The first and second inspectors of tobacco shall each receive the following salaries:

At the warehouse belonging to the state in the city of *Richmond*, and at *Farmville* in the county of *Prince Edward*, \$360

At every other warehouse, three hundred and thirty-three dollars, except as follows:

At *Tye River* warehouse, - - - \$ 300

At *Randolph's, Royster's, and Venable's*, - - - 250

At *Thornton's*, - - - 150

At *Curdsville* and *Howardsville*, - - - 100

§ 44. The salaries to the inspectors in any warehouse are to be paid out of the receipts for inspection at such warehouse, and in no case is the state to be charged therewith, or with any other expenses of such warehouse.

2 R. C. p. 158, § 47.

1822-3, p. 24, ch. 26, § 4.

1830-31, p. 127, ch. 55.

§ 45. Besides the rents and storage before provided for, there shall be paid to the inspectors at the warehouse in which it is inspected, for each hogshead, cask or other parcel of tobacco weighing not less than five hundred pounds, thirty cents for the use of the state.

2 R. C. p. 158, § 47.

1822-3, p. 26, § 8.

§ 46. There shall be paid to said inspectors for each hogshead or cask inspected by them, fifty cents for opening, inspecting, coopering up, furnishing nails, marking and weighing it.

1822-3, p. 26, § 9.

1823-4, p. 35, ch. 32, § 2.

§ 47. For every hogshead or cask, of the weight aforesaid, of inspected tobacco, received on storage at any warehouse, there shall be paid to the inspectors thereof fifty cents for opening one head, breaking the tobacco in one place, coopering up the same, the necessary nails, and turning it into the house again.

§ 48. There shall be paid to the inspectors, for each hogshead or cask delivered out of their warehouse, twenty-five cents; and for putting into good order each hogshead or cask noted by them to be in bad order, seventeen cents.

2 R. C. p. 166,
§ 65.
1822-3, p. 26, § 6.
1823-4, p. 35, § 3.

§ 49. For the duty to the state, and such services by the inspectors, as are mentioned in the four preceding sections, one half the amount prescribed therein shall be paid, where the hogshead or cask is of less weight than five hundred pounds, and half the duty and fees to inspectors aforesaid, and half the rents and storage aforesaid, for any quantity of loose tobacco, less than five hundred pounds.

§ 50. The inspectors shall require payment of all sums to be paid to the state, or to the proprietors of their warehouses, before the delivery of the tobacco for which they are due, and shall not be bound to deliver any such tobacco, until such sums and all their own fees have been paid.

§ 51. An additional inspector, when called to act by reason of the disagreement in opinion, or the absence, or to inspect the tobacco, of other inspectors, shall be paid, in the first case, out of the salaries of the other inspectors, in proportion to the time he shall officiate; in all other cases, out of the salary of the inspector who is absent, or whose tobacco is to be inspected.

2 R. C. p. 144,
§ 19.

Waste and sample tobacco, or tobacco remaining three years in warehouse, to be sold.

§ 52. All waste tobacco, and all samples drawn and not taken away from any warehouse by the owner or purchaser of the tobacco, shall be carefully preserved by the inspectors for the benefit of the state. Such samples and waste tobacco shall from time to time be sold, for the use of the state, by the inspectors, who shall have a commission of five *per centum* on the proceeds.

1825-6, p. 13, § 1.
1835-6, p. 53, ch.
77, § 2.

§ 53. If any inspector* shall fail to perform any duty enjoined in the two preceding sections, he shall forfeit one hundred dollars.

§ 54. When any tobacco shall have remained in any warehouse undemanded for three years from the time of its reception therein, the inspectors for each warehouse shall advertise in some newspaper published convenient to said warehouse, for three weeks successively, a list of the marks, numbers and weight of such tobacco, with the names of the persons to whom notes or receipts for it were given; and, if no owner claim the same, within three months after such advertisement, they shall proceed to sell the same and have the like commission on the proceeds as is prescribed in the fifty-second section for waste tobacco. The proceeds of such sale shall be

2 R. C. p. 167,
§ 70.

* As reported by the revisors, p. 469, (of their reports,) ch. 87, § 59, the word is *inspector*; in engrossing the bill, it was, by mistake, written *proprietor*, and the roll is like the engrossed bill.

paid into the treasury, after deducting therefrom all legal charges for storage, rent, duty and inspectors' fees. The amount so paid into the treasury, shall be refunded to the owner of said tobacco when he shall establish his right thereto.

Inspectors to account for and pay money, received by them.

2 R. C. p. 142,
§ 17.

§ 55. The inspectors at each warehouse shall account for and pay to the proprietors thereof (other than the state) on the tenth day of April and tenth day of October in each year, all money received or which ought to be received by them to the use of said proprietors.

Id. p. 159, § 48,
49.

§ 56. Inspectors of tobacco shall annually return to the first auditor an account on oath of all money received, or which ought to be received by them for the state, within the year ending the thirtieth day of September, and they shall, before the tenth day of October, pay into the treasury all balances due to the state on such account. The said account shall state the number of hogsheads, casks or parcels, of tobacco received and delivered out during the said year.

1835-6, p. 53, ch.
77, § 2.

§ 57. If any inspector shall fail to account for and pay the said money as prescribed in the two preceding sections, he shall for each failure forfeit one thousand dollars to the individual proprietor of the warehouse, or the commonwealth as the case may be. And if he shall fail to return an account of the quantity of tobacco received and delivered as aforesaid, he shall forfeit one hundred and fifty dollars to the commonwealth. The said penalties may be recovered by motion; and, in the case of the commonwealth, the proceeding therefor may be in the general court, or in the circuit court of *Henrico*.

Liability of commonwealth or inspectors for tobacco burnt.

2 R. C. p. 166,
§ 67.
1825-6, p. 13, ch.
14, § 7.

§ 58. If any tobacco in any warehouse, where the same was received for inspection, shall, within a year from the date of its being received, be damaged therein by fire, the owner thereof may recover from the state a sum equal to the damage so sustained.

3 Leigh 241.

Id.

§ 59. If any tobacco, stored in any warehouse belonging to the state, be so damaged at any time while remaining in said warehouse, the owner may in like manner recover the amount of his damages.

Id.

§ 60. If the inspectors at any warehouse belonging to the state refuse to receive any inspected tobacco on storage, (of which refusal they shall give a certificate,) and the same shall be stored in any other warehouse established by law in the same town, and be therein damaged by fire at any time within a year after such refusal, the owner of such tobacco may in like manner recover the amount of his damages.

Id.

§ 61. No inspectors shall be liable to the owner for any

tobacco damaged by fire, unless the fire was caused by his neglect or fault.

§ 62. If the fire from which any such damage occurred was caused by an inspector permitting any other person to use or occupy the warehouse, or any part of it, or by the neglect or voluntary act of said inspector, he and his sureties shall be liable to the state, for all money paid by it to the owners of any tobacco damaged by such fire, with interest thereon from the time it was so paid. 2 R. C. p. 166, § 67. 1825-6. p. 13, ch. 14, § 7.

§ 63. Any person who shall make any fire within any such warehouse, except in the inspectors' rooms, shall forfeit thirty dollars.

§ 64. When there is a wooden chimney within two hundred yards of any such warehouse, if the owner of said chimney shall not pull it down, on being required to do so, the sheriff of the county or sergeant of the corporation, as the case may be, shall pull it down.

Tobacco not to be exported until inspected.

§ 65. No unmanufactured tobacco, whether stemmed or unstemmed, shall be exported or put on board of any vessel or boat for that purpose, unless the same be packed in hogsheads or casks, and unless it shall have been inspected and marked or branded, by inspectors of tobacco in the manner prescribed by law. If any person shall ship or export any tobacco contrary to this section, he shall forfeit one dollar for every pound of tobacco so shipped or exported. And the commanding officer of any such vessel or boat on which any such tobacco is found, shall forfeit twenty dollars for every hundred weight of such tobacco, and a proportionate sum for a less quantity. 2 R. C. ch. 220, § 1, 79, 80.

§ 66. A justice, upon information given to him on oath, that there is good cause to suspect that there is uninspected tobacco in casks, bulk, or parcels on board a vessel or boat, in violation of the preceding section, shall issue his warrant to the sheriff, sergeant or constable of his county or corporation, commanding him to go on board such vessel or boat, and seize any such uninspected tobacco as may be found therein. The officer executing such warrant shall carry any such tobacco so seized, before the same or any other justice, who shall cause the said tobacco to be carried to the nearest warehouse established by law for the inspection of tobacco, and there inspected and marked, or branded, according to law. Id. § 80

§ 67. If the said tobacco were carried on board such vessel or boat, without the knowledge or consent of the owner, the same shall then be restored to him on the same terms with other inspected tobacco. But otherwise, or if no owner shall claim the same within three months, it shall be sold by the inspectors and the proceeds accounted for and paid into the

treasury in the same manner, and under the same penalties for failure, as in the case of other tobacco sold by the inspectors.

2 R. C. p. 170,
171, § 79, 80.

§ 68. If the commander of any vessel or boat shall resist the execution of any such warrant, he shall forfeit six hundred dollars; and if any other person shall do so, he shall forfeit eighty dollars.

Id.

§ 69. One-half of any forfeiture recovered for the violation of either of the four preceding sections shall be to the informer. Every inspector and other civil officer of the state shall give information of any such violation, within his knowledge, to some attorney for the commonwealth in a court having jurisdiction of the offence.

Tobacco in bulk or parcels.

Id. p. 172, § 82.

§ 70. No tobacco in bulk or in parcels, or otherwise than in hogsheads or casks, shall be taken on board any boat or vessel to be transported for hire from one part of the state to another part. All such tobacco may be seized by any person whatever. The commander of any such boat or vessel, on board of which any such tobacco shall be found, shall forfeit fifty cents for every pound weight of such tobacco. If any person (other than the commander,) employed on board such boat or vessel, shall take such tobacco on board or conceal the fact of its being on board, he shall forfeit twenty dollars. And if any slave be convicted thereof a second time, his owner employing him on board any such boat or vessel, shall forfeit fifty cents per pound for all such tobacco thereafter taken on board such boat or vessel by such slave, and also two dollars for each day such slave shall be thereafter so employed.

Id.
1825-26, p. 13,
§ 6.

§ 71. All such tobacco, if put on board such boat or vessel without the knowledge of the owner of said tobacco, shall be restored to him; but if put on board by him, or if no owner shall appear to claim the same in three months, it shall be forfeited to the use of the person receiving the same.

Commissioners to examine warehouses; how inspectors may be removed.

2 R. C. p. 162, § 52.

§ 72. The court having the power to nominate inspectors to a warehouse shall annually appoint one or more commissioners, who shall visit such warehouse at least once in every two months, and report to the said court its condition, the quantity of tobacco it is capable of containing, and what repairs, if any, are required.

Id. p. 143, § 18.
1846-7, p. 68, § 3.

§ 73. They shall have provided proper scales or balances and weights, and all other proper conveniences, and see that they are kept in repair, and that the weights conform to the lawful standard.

Id.

§ 74. They shall examine into the manner in which the inspectors perform their duty, and shall report to the governor,

and to the said court, any neglect or breach of duty on the part of any inspector, which may come to their knowledge.

§ 75. Every such commissioner shall be allowed by said court two dollars for every day he is employed, which shall be paid out of the treasury from the tobacco fund. ^{2 R. C. p. 162, § 52.}

§ 76. If any such commissioner shall fail to perform any duty, he shall be fined a sum not exceeding fifty dollars. ^{Id.}

§ 77. If the governor shall be satisfied of the neglect or misconduct of any inspector, he may remove him from his office. ^{2 R. C. p. 163, § 53.}

Manufactured tobacco.

§ 78. If any person use, or permit to be used, on any cask, box or keg of manufactured tobacco, any brand or mark indicating a place, or a manufacturer, different from the place in which, or the manufacturer by whom, it was really manufactured, he shall forfeit ten dollars for each cask, box or keg so falsely marked or branded, one-half whereof shall be to the informer. ^{1834-5, p. 45, ch. 64. 1848-9, p. 55, ch. 104.}

§ 79. None of the provisions of this chapter, other than the preceding section, shall be construed to apply to manufactured tobacco. ^{2 R. C. p. 170, ch. 221.}

Exception as to Alexandria.

§ 80. This chapter shall not apply to the county of *Alexandria*, which shall be governed by an act concerning the tobacco trade in the town of *Alexandria*, passed February the twenty-fourth, eighteen hundred and forty-nine. ^{1848-9, p. 207, ch. 280.}

CHAPTER LXXXVIII.

OF THE INSPECTION OF FLOUR AND CERTAIN OTHER COMMODITIES.

SEC.		SEC.	
1. }	Inspectors appointed and vacancies	17. }	How barrels, boxes, &c., marked
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3. }	Deputy inspectors; how appointed.	19.	Penalty for failure, and for false mark put thereon.
4. }		20.	Inspector to attend when required and inspect.
5.	Inspectors, &c., removed by governor.	21. }	How quality of flour, meal, fish,
6.	Inspection districts; how established.	22. }	&c., to be marked.
7.	Quality of flour, meal and bread offered for inspection.	23. }	
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10. }		27. }	Same as to butter, lard, lime and
11. }	Quality and barrels of various other	to }	hemp.
12. }	articles.	30. }	
13. }		31.	When articles to be condemned; how marked, &c.
to }			
16. }	Of salt, lime, lumber and hemp.		

SEC.		SEC.	
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33.	paired.		ished.
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35.	viewed.		marked.
36.	Fees of inspection; by and to whom	45.	Manufacturer or packer, when lia-
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38.	Labour to be furnished inspectors;	46.	Penalty on inspector for falsely
39.	who may unpack any parcel sus-		marking or permitting others to
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40.	Inspectors to see the laws enforced,	47.	Inspectors to keep account of in-
41.	and not to trade in articles of	48.	spections and return or publish
	which they are inspectors.		the same.
42.	Exportation or sale without in-	49.	Exception as to <i>Norfolk</i> , whose
	spection prohibited in certain		council is to appoint inspectors.
	cases.		

How inspectors appointed, and removed.

2 R. C. p. 177, ch. 222, § 1, 2; p. 185, 188, ch. 223, 4; p. 190, ch. 225, § 1; p. 193, ch. 226, § 1; p. 197, ch. 227, § 2. 1826-7, p. 29, ch. 31, § 1. 1830-31, p. 110, ch. 42, § 4. 1839-40, p. 57, ch. 69. 1845-6, p. 104, ch. 136, § 1. 1846-7, p. 151, ch. 122, § 2, 3.

§ 1. Inspectors may be appointed of any of the following commodities, to wit: flour, corn meal, bread, salt, fish, pork, beef, tar, pitch, turpentine, lumber, lime, hemp, butter or lard. Such appointment shall be made annually, in September or October, by the governor, for the several counties and towns in which it may be necessary to appoint such inspectors. The same person may be appointed inspector of two or more of said commodities. But there shall not be, in the same town more than one, nor in the same county, more than six inspectors of the same commodity.

§ 2. In case of a vacancy in the office of inspector, the governor shall appoint one for the residue of the year.

§ 3. Any inspector, (other than an inspector of lumber,) with the approbation of the governor, may appoint one or more deputies to assist him, for whose acts his principal shall be liable, and be entitled to the same fees as for his own.

§ 4. Each inspector of lumber shall, with the approbation of the governor, appoint cullers for his county or inspection district, who shall be under his direction, and shall at least once a month make return to him of the quantity and kind of lumber culled by them, and for whom.

§ 5. The governor may remove from office at any time an inspector or deputy inspector, for neglect of duty, incapacity, or misconduct.

Inspection districts.

1822-3, p. 144, ch. 176, § 1.

§ 6. Where more than one inspector shall be appointed in the same county for the same commodity, the court shall lay off the county into as many districts as there are inspectors, and assign one to each inspector, and no inspector shall be authorized to inspect such commodity in the district assigned to any other, except when that other shall fail, on being required by the owner, promptly to inspect the same.

In what condition articles must be, that are offered for inspection.

2 R. C. p. 179, § 3. § 7. All wheat flour offered for inspection shall be well

bolted and merchantable, of due fineness, and without mixture of coarser flour, or of any other grain than wheat; and all corn meal so offered shall be well sifted, made of corn well kiln-dried and merchantable, of due fineness and without mixture of any other material.

§ 8. All barrels containing flour, meal, and bread, offered for inspection, shall be made of good seasoned timber, either split or sawed, with ten hoops, well nailed with four nails in each chine hoop, and three nails in each bilge hoop. The stave shall be twenty-seven inches long, and the head seventeen inches and a half in diameter. In half barrels, the staves shall be twenty-three inches long, and the head twelve and a half inches in diameter. 2 R. C. p. 179, § 4. 1839-40, p. 56, ch. 68.

§ 9. Each barrel of flour or corn meal shall contain one hundred and ninety-six pounds of flour or meal, and each half barrel ninety-eight pounds; and in case of deficient quantity, any person, offering such flour or meal for inspection, shall forfeit eight cents for each pound of such deficiency not exceeding three, and seventeen cents for each pound over three. Id. § 6.

§ 10. All fish offered for inspection shall be packed, all of one kind, in barrels of well seasoned strong timber, clear of sap, not less than five-eighths of an inch thick, made tight, with at least twelve hoops, containing not less than twenty-eight gallons. The barrels shall be well nailed and pegged, and full of fish well salted, clean, sound, and merchantable. 2 R. C. p. 191, § 1, 3, 7. 1835-6, p. 55, ch. 82, § 1.

§ 11. All barrels containing pork or beef offered for inspection shall be made of the same kind of timber, and of the same thickness and strength, as is prescribed for fish barrels, and shall contain at least two hundred and four pounds nett, of good, clean, fat, sound, merchantable meat, well salted between each layer, and well pickled. There shall not be more than two heads in one barrel of pork, and the whole shall be well salted and cured before it is packed. 2 R. C. p. 186, § 3, 4, 7.

§ 12. All barrels of pitch, tar, or turpentine offered for inspection, shall contain at least thirty-one gallons and a half, and be full of good, clean, sound, and merchantable tar, pitch, or turpentine. Id.

§ 13. All barrels containing salt offered for inspection, shall be made of good, seasoned materials, with at least ten hoops, with four nails in each chine hoop, and three nails in each upper bilge hoop, and not exceeding thirty inches in length, and eighteen inches in diameter across the head within the chine. 2 R. C. p. 193, § 2. 1829-30, p. 43, ch. 50, § 1.

§ 14. All lime offered for inspection shall be in good casks, well made, of sound and seasoned staves and heading, with at least ten hoops nailed on each cask, not less than one inch wide in the narrowest part; the staves to be made of sawed or rift timber, and not less than three eighths of an inch thick on the thin edge; each of the heads to be well crozed in, and not less than three-fourths of an inch thick; and each cask to be not less than twenty-six and one-half inches in length between the heads, and seventeen inches wide between the chine. 1846-7, p. 151, ch. 162, § 8.

2 R. C. p. 197, § 1.
1830-31, p. 109,
ch. 42, § 1.

§ 15. 1. All lumber offered for inspection shall be of the following dimensions and quality, viz: Long butt staves, five feet six inches long; short butts, four feet six inches long; and both five inches wide, two inches thick on the thin edge, and not more than two and a half inches thick in any place when dressed.

2. Pipe staves four feet six inches long, three inches wide, and three-quarters of an inch thick on the thin edge, when dressed. Hogshead staves three feet six inches long, three inches wide, and three-quarters of an inch thick on the thin edge, when dressed. Rough hogshead staves of the same dimensions as the dressed.

3. Barrel staves, when dressed, and rough barrel staves, shall be two feet eight inches long, three inches wide, and three-quarters of an inch thick.

4. Hogshead heading shall be twenty-eight, thirty and thirty-two inches long, with a due proportion of pieces of each length. They shall be five inches wide, and three-fourths of an inch thick on the thin edge, when dressed. All of the above mentioned lumber shall be of good white oak.

5. Red oak hogshead staves shall be three feet six inches long, three and a half inches wide including sap, and three inches wide clear of sap, and three-fourths of an inch thick on the thin edge when dressed.

6. Butt staves shall not have more than seven, pipe staves not more than six, hogshead staves, heading and barrel staves not more than four worm holes in each piece or stave. And all of the lumber aforesaid shall have been split with the grain of the tree.

7. Building shingles shall be twenty-two inches long, four inches wide, and five-eighths of an inch thick at the butt, when dressed, and shall be free from sap.

8. All plank, scantling and ranging timber, shall be perfectly sound, and have square edges.

9. All the above mentioned lumber shall be otherwise free from defects that are calculated to impair its value.

2 R. C. p. 188,
§ 2, 4.

§ 16. All hemp offered for inspection shall be strong, dry, sound and merchantable, and shall be prized, either before or when inspected, in bale boxes, three feet two inches long in the clear, three feet deep, one foot eight inches wide at the bottom, and two feet at the top.

Id. p. 177, § 5.

§ 17. Every barrel of flour, corn meal, bread, fish, pork, beef, tar, pitch, turpentine or lime, every barrel, box or bag of salt, and every bale of hemp made, packed or filled in this state, and offered for inspection, shall have the weight and tare thereof marked thereon by the manufacturer, packer or filler thereof.

Id. p. 178, § 7; p.
193, § 3, 18.
1826-7, p. 31, ch.
31, § 5, 8.
1829-30, p. 43, ch.
50, § 2.
1830-31, p. 108,
ch. 41, § 1.

§ 18. Every manufacturer of flour, corn meal, bread or salt for exportation, shall keep a mark by which his own manufactory may be distinguished, with which he shall brand or mark distinctly each barrel of flour, meal or bread, and each barrel, box or bag of salt, before the same is removed from the place

where manufactured; but no such manufacturer shall use or permit to be used on any such commodity more than one such brand or mark within one year from the first day of June annually, other than a private mark indicating the quality of the article.

§ 19. For every barrel, box, bag or bale of any of the commodities mentioned in the two preceding sections, offered for inspection, or removed from the manufactory contrary to either of said sections, the person offering the same for inspection, or the manufacturer, shall forfeit fifty cents; and if any person whatever shall wilfully put a false tare or weight on any such barrel, box, bag or bale, he shall forfeit one dollar on every such barrel, box, bag or bale.

2 R. C. p. 178, 181, § 7, 8; p. 193, § 3, 18. 1826-7, p. 31, ch. 31, § 5, 8. 1829-30, p. 43, ch. 50, § 2. 1830-31, p. 108, ch. 41, § 1.

Duty of inspectors to inspect and mark or certify commodity.

§ 20. Every inspector, by himself or a deputy, shall attend when required, at such time or place, within his county or inspection district, as the owner of any commodity of which he is inspector may appoint, and examine such commodity, either by boring through the head, in case of a barrel, with an auger not exceeding half an inch in diameter, or in some other satisfactory manner as to barrels and all other parcels.

2 R. C. p. 181, § 9; p. 185, § 2; p. 190, § 1, 3.

§ 21. If an inspector of flour, corn meal, or bread, shall judge that it is merchantable, and packed in proper barrels as prescribed, he shall, after plugging the hole, if one has been made, brand the barrel, in the quarter, with the name of the county or place in which he is inspector; and in respect to flour, with the quality thereof, either as "*family flour*," "*superfine*," "*fine*," or "*middlings*;" and as to corn meal, with the words "*fine meal*;" and as to bread, with the words "*fine bread*."

2 R. C. p. 181, § 9. 1836-7, p. 51, ch. 73.

§ 22. If an inspector of fish, pork, beef, tar, pitch, or turpentine, shall judge the same to be sound and merchantable, and as to fish, pork, or beef, that it is properly packed and salted, and in proper barrels, he shall brand or stamp each barrel with the letter V, with the first letter of the name of his county or town, and with his own name; and in respect to fish, pork, or beef, with the number one or two, as he may judge it to be of first or second quality, either as to the quality of the article, or the order in which the barrel is found; and in respect to pork, with the letter L, for large pork, or the letter S, for small pork, as the case may be; and the head of each barrel of tar, pitch, or turpentine, with a mark distinguishing the article it contains.

2 R. C. p. 185, § 2, p. 186, § 3; p. 190, § 1.

§ 23. If an inspector of salt shall judge the same to be merchantable, and, if packed in barrels, that they are such as are required, he shall mark or brand each barrel, box, or bag, in a durable way, with the name of his county, and with the quality thereof, as number "*one*," "*two*," or "*three*." He shall also weigh each barrel, box, or bag, and mark the same in

2 R. C. p. 193, § 4, 5; p. 195, § 9. 1826-7, p. 29, § 3, 6.

like manner, with the gross weight, and with the tare, allowing for each barrel of salt twenty-eight pounds for the tare. But if he finds that the barrel exceeds that tare, he shall cause the true tare to be marked thereon, for which he shall have an extra fee of one cent on each barrel, bag or box.

1832-3, p. 145, ch. 176.

§ 24. In the case of alum salt, (not to be exported in bulk,) the inspector may examine the same in bulk, if desired, but shall, after it is packed, weigh and mark or brand the same, as directed in the preceding section, and also with the words "*alum salt.*"

1826-7, p. 29, ch. 31, § 3.

§ 25. No inspector shall pass any salt in a barrel of larger dimensions than is prescribed; nor shall any salt be weighed by him until it shall lay twenty-four hours, at least, and such additional time after packing, as the inspector shall deem sufficient for draining it.

2 R. C. p. 195, § 9.
1826-7, p. 30, ch. 31, § 6.

§ 26. In case of salt intended to be exported in bulk, if the inspector shall find the same to be of first quality, he shall grant to the owner a certificate stating the quality and probable quantity of the salt, the name of the vessel in which it is laded, and the market to which it is destined.

1832-3, p. 145, ch. 177.
1845-6, p. 104, ch. 138, § 1.

§ 27. Each inspector of butter or lard shall examine all butter or lard offered for inspection in tubs, firkins, kegs or barrels, exceeding in weight fifty pounds; and shall brand or stamp the same, if fit to pass, with the number "*one,*" "*two,*" or "*three,*" as he may judge it to be of first, second, or third quality.

1846-7, p. 151, ch. 162, § 2, 6, 8.

§ 28. If an inspector of lime shall find it merchantable, and in proper casks, he shall brand each cask with the words "*lime slacked,*" or "*unslacked,*" the words "*first,*" "*second,*" or "*third,*" as he may judge the quality thereof, and with his name; and, should he find the casks out of order, he shall cause them to be properly coopered, so to be fit for transportation.

2 R. C. p. 199, § 4.
1830-31, p. 109, ch. 224, § 6.

§ 29. If any inspector of lumber shall find any such offered for inspection to be merchantable and according to law, he shall give to the person offering it for inspection, a certificate that it has been inspected and passed, to be delivered, with such lumber, to the master or commander of any vessel in which such lumber may be shipped. Each plank or piece of ranging timber so inspected, shall be marked with an iron so as to shew its quality, as number "*one,*" "*two,*" or "*three,*" and also the number of superficial feet.

2 R. C. p. 189, ch. 224, § 2, 4.

§ 30. If any inspector shall judge any hemp offered to him for inspection to be strong, dry, sound, and merchantable, and packed in bale boxes of the proper size, he shall annex thereto a label stamped with the quality and weight of each bale, distinguishing such as is clean, as well as dry and well-conditioned, as "*first*" quality, and such as is not perfectly clean, though dry and well-conditioned, as "*second*" or "*third*" quality.

Commodities refused, condemned, or defective.

§ 31. If any inspector of any commodity offered to him for inspection shall judge the same to be unmerchantable and unfit to pass, or not packed as, or in barrels of less dimensions than is, required, he shall brand each such barrel, box, bag, or cask, tub, firkin, or keg, so deemed unfit to pass, with the word "*condemned*;" and in the case of lumber or salt inspected in bulk, shall refuse the certificate required when the article is passed; and in the case of hemp, shall annex to each bale a label, stamped with the word "*condemned*." But such inspector shall, if required by the owner of such commodity, secure the same for a further examination. If no such examination, as hereinafter provided, be had within twenty days, or, on such review, the inspector's judgment be confirmed, he shall brand the same, if not previously done, according to his judgment.

§ 32. If any inspector shall find any such barrel of any such commodity damaged or out of order, though not to such extent as to make it proper on that account to condemn it, he shall state, in writing, the cost of putting the same in good order, with the block or cooper's mark on the same, the grade of the article, and the maker's or packer's brand thereon, and deliver such statement to the owner of such article. The amount of damage thus ascertained shall be deducted from the price, if it has been sold, unless otherwise agreed, or unless the seller shall cause such barrel to be put in good order.

§ 33. Should lime casks be found out of order, as stated in the preceding section, the inspector shall cause them to be properly coopered, so as to be fit for transportation.

§ 34. Any person offering for inspection any such commodity, which is judged of inferior quality, or condemned or refused by any inspector, may apply within twenty days after such inspection, to a justice of the county or town for which he is inspector, who shall thereupon issue a warrant directed to three disinterested persons selected by him to review the inspector's judgment. They shall take an oath to discharge their duty faithfully; and if they shall declare such commodity to be merchantable or of better quality than it was judged to be by the inspector, he shall thereupon erase the mark or brand with which he may have marked the same, and mark, brand or label it, as the said reviewers may direct; and in the case of lumber or salt inspected in bulk, grant a certificate or note in conformity with the reviewer's judgment; and in such cases the inspector shall pay the costs of the review, including three cents to each of the reviewers for each barrel of any such commodity, or for every five bushels of salt, not in barrels, or fifty cents for each bale of hemp, or seventy-five cents for each thousand pieces of lumber, or six cents for each parcel of butter or lard reviewed. But if the judgment of the inspector be confirmed by the reviewers, then the complainant shall pay

the costs of the review, including the same compensation to the reviewers, besides the fees of inspection to the inspector, except that, in the case of salt, he shall pay the inspector ten cents for each barrel or every five bushels of salt.

2 R. C. p. 181,
§ 1, 2; p. 194, § 7.

§ 35. If any person, so appointed as a reviewer, shall refuse to act, he shall forfeit to the person applying for such warrant five dollars.

Fees for inspection.

§ 36. Inspectors of the several commodities hereinbefore mentioned, and cullers of lumber, shall have the following fees :

2 R. C. p. 181,
§ 10.
1833-4, p. 263, ch.
216, § 2.

1. For each barrel of flour inspected at *Richmond* one cent, and at all other places two cents; on each barrel of corn meal or bread, two cents.

2 R. C. p. 191,
§ 1; p. 186, § 2.

2. For each barrel of fish, pork and beef, six cents; and for each barrel of tar, pitch and turpentine, four cents.

2 R. C. p. 194,
§ 5.

3. For each barrel of salt, and for every five bushels thereof, when it is inspected in boxes, in bags, or in bulk, one cent.

1811-2, p. 88, ch.
143.
1830-31, p. 282,
§ 1.

4. For each lime cask, three cents, and for each bushel of lime, one cent; and for each new hoop furnished and put on, two cents, and for any additional coopering, a fair compensation not exceeding five cents for each cask.

1846-7, p. 152, § 6,
8.

1845-6, p. 104, § 1.

5. For each tub, firkin, keg or barrel of butter or lard, four cents.

1830-31, p. 112,
§ 8.
1842-3, p. 108,
§ 1, 2.

6. The inspector shall receive for every thousand feet, board measure, of merchantable plank, scantling or ranging timber, five cents; for every thousand merchantable staves or heading, eight cents; and on every thousand shingles, two cents. The cullers of lumber shall receive for every thousand received or merchantable pipe staves and heading fifty cents; for every thousand hogshead staves and heading forty-two cents; for every thousand long butt staves eighty-three cents; for every thousand short butt staves sixty-two and a half cents; for every thousand barrel staves thirty-three cents; for every thousand shingles ten cents, and for every thousand feet, board measure, of plank, scantling or ranging timber thirty cents; and on all condemned staves, plank, scantling or ranging timber and shingles, one half of the above compensation shall be allowed: One-half of all which fees shall be paid by the seller and the other half by the buyer; and in computing the said staves, heading or shingles, the short hundred, or one hundred, shall be the standard by which they shall be bought and sold, and the fees charged.

R. C. p. 189, § 2.

7. For each ton of hemp inspected, the inspector shall have one dollar and a half, and so in proportion for any smaller quantity.

§ 37. The said fees shall be paid by the person offering the commodity for inspection, except in the case of lumber, and in that case one-half shall be paid by the buyer and one-half by

the seller, unless the same be not sold at the time of inspection, in which case the whole shall be paid by the person offering it for inspection.

§ 38. While the inspector is engaged in examining and weighing any commodity, the person offering the same for inspection shall furnish as many hands at his own charge to assist the inspector as may be necessary. 1831-2, p. 260, § 5.
1842-3, p. 108, § 1.

§ 39. An inspector, if he suspect any commodity on which the tare is marked to be falsely marked, or if the purchaser request it, shall unpack any barrel or other parcel of such commodity, and if he find the tare greater than is marked, the manufacturer or packer and filler, who sold the same, shall pay the expense of unpacking or repacking, in addition to any penalty imposed by law. But if otherwise, the said expense shall be paid by the inspector, if he acted on his own suspicion, or by the purchaser, if the trial was made at his request. 2 R. C. p. 180, § 7.

Inspectors to see laws enforced, and not to trade in articles of which they are inspectors.

§ 40. Every inspector shall endeavour to enforce the law as to the inspection of commodities of which he is inspector; and, in every case in his knowledge of any violation thereof, shall inform some attorney for the commonwealth of his county or town. 1830-31, p. 108, § 2.
1829-30, p. 43, § 3.

§ 41. If any inspector, deputy inspector, or culler of lumber, shall trade in or purchase, otherwise than for his own consumption, any commodity of which he is inspector or culler, he shall forfeit, if an inspector of flour, corn meal, bread, fish, pork, beef, tar, pitch, turpentine or lime, seven dollars for every barrel, cask, bag or box, or for every five bushels of salt in bulk so traded in or purchased; if an inspector of butter or lard, five dollars for each tub, firkin, keg or barrel; and if an inspector of lumber or hemp or a culler of lumber, one hundred dollars for every such offence. But nothing in this section shall be construed to prevent an inspector or culler of lumber from selling any commodity which he may have received in payment of his fees. 2 R. C. p. 183, § 17; p. 188, § 14.
1830-31, p. 111, § 6.

Exportation or sale without inspection; in what cases prohibited.

§ 42. If any person shall export or put on board of any vessel for exportation, in any of the cities or towns on tide water in this state, any flour, corn meal, bread or salt, or shall export or attempt to export as aforesaid, or sell or offer to sell any fish, pork, beef, tar, pitch, turpentine, lime, butter or lard in the cities or towns aforesaid, without the same having been inspected as required by law, he shall forfeit two dollars for each barrel, cask, box or bag so exported or offered for sale; and if any person shall export out of the state, or attempt to 2 R. C. p. 182, § 14; p. 185, § 2, p. 192, § 6; p. 193, § 5; p. 194, § 8; p. 195, § 9.
1826-7, p. 30, § 4.
1830-31, p. 109, § 6.
1846-7, p. 153, § 9, 10.

export as aforesaid, any hemp, or export or attempt to export beyond the limits of the *United States* any lumber, without said lumber or hemp having been inspected, or without the certificate in the case of lumber required by law, he shall forfeit for every such bale of hemp five dollars, and for every such offence in respect to lumber three hundred dollars; the above penalties shall not apply to any commodities (other than lime) imported into this state after being inspected and marked according to the laws of any other state. Nothing in *the preceding** section shall be construed to prevent the selling of any of the aforesaid articles in a town having less than two thousand inhabitants, or to prevent the exportation of any of the aforesaid articles, if the same be condemned, and the mark, brand or certificate of condemnation accompany the same.

Using false brand or mark.

2 R. C. p. 183,
§ 15, 18; p. 192,
§ 6; p. 195, § 9,
11.
1845-6, p. 104, § 3.

§ 43. If any person shall wilfully use or imitate the brand or mark of any other person on any such commodity, or shall pack any such commodity in a barrel, cask, box, bag or bale, tub, firkin or keg, previously branded or marked with the name or brand of any other person, or shall alter the brand or mark made by an inspector on such commodity, or shall shift or change the contents of any such barrel, cask, box, bag or bale, after it has been inspected, or mark or brand with the brand or mark of the inspector, or in imitation thereof, any not inspected, and shall sell or offer to sell the same, he shall forfeit twenty dollars for every such offence.

Penalties in certain cases.

2 R. C. p. 180,
§ 7; p. 186, § 4;
p. 191, § 4; p.
193, § 4.

§ 44. If any person shall sell or offer to sell any such commodity in barrels, or other package or parcel, known by him to be of less weight, size and gauge (after allowing for ordinary shrinkage and loss of weight) than is required by law, or than is marked or branded thereon, or than is stated in the certificate of the inspector thereof, he shall forfeit ten dollars for every such barrel, package or parcel so sold, or offered for sale.

2 R. C. p. 180,
§ 6.

§ 45. If any penalty hereinbefore imposed shall be recovered of any person other than the manufacturer or packer of the article, for any default of said manufacturer or packer, such person may recover the amount paid by him from such manufacturer or packer.

2 R. C. p. 186, § 2;
p. 191, § 2.
1830-31, p. 112,
ch. 42, § 10.
1846-7, p. 153,
§ 7.

§ 46. If any inspector or culler, shall mark or brand any barrel or other package of any such commodity, or give a certificate of his having inspected any lumber or salt in bulk, without having actually inspected the same; or pass or brand any such commodity as merchantable, which he knows to be unfit to pass, (unless ordered by reviewers according to law;) or shall permit any other person to use his mark or brand for

* The words *the preceding* in amendment of house of delegates.

that purpose, or shall be guilty of any wilful neglect or omission of his duty as inspector, he shall forfeit fifty dollars for every such offence.

Inspectors to keep account of articles inspected.

§ 47. Every inspector shall keep a book in which he shall enter an account of the quantity and description of the commodities inspected by him; and each manufacturer of salt shall return monthly to the inspector of salt in the county, town or district to which he belongs, a statement of the salt removed from his manufactory without being inspected, to be entered by said inspector in his said book. ^{1826-7, p. 29, § 3, 7.}

§ 48. Each inspector of salt shall deliver quarterly, under oath, an abstract of all salt so inspected by, or stated to him, to the clerk of the court of his county or corporation; and each inspector of flour, meal or bread, shall publish quarterly a statement of the quantity and quality of the said commodity inspected by him. ^{Id. 2 R. C. p. 182, § 13: p. 196, § 17, p. 200, § 6.}

Exception as to Norfolk city.

§ 49. Nothing contained in this chapter shall affect the right of the council of *Norfolk* city to appoint inspectors: and all the duties imposed by this act upon the court of any county or corporation, in respect to inspectors, are hereby imposed upon the council of said city. Such council may appoint inspectors at their first meeting after their election.

CHAPTER LXXXIX.

OF WEIGHTS AND MEASURES.*

SEC.		SEC.	
1.	Standard weights and measures;	10.	How seals to be procured.
2.	where to be kept; and by whom.	11.	How weights, &c., may be sealed at any time.
3.	Weights, &c. for counties, &c.;	12.	Penalties on court, superintendent,
4.	how and where kept.	13.	sealer, or individuals, for violat-
5.	How those of counties and indivi-	14.	ing this law.
6.	duals to be procured and sealed,	15.	Weights used by banks to be sealed
7.	and how often.	16.	once in five years; how gold may
8.	More than one sealer of weights, &c., may be appointed.		be required to be weighed.
9.	Fees for sealing, &c.; how paid.		

* Ancient statutes on this subject in Hen. Stat. vol. 1 p. 126, § 22; p. 170, 71, ch. 36; p. 195, ch. 32; p. 221, ch. 14; p. 331, ch. 12; p. 348, ch. 11; p. 391, ch. 2; p. 473, ch. 89, 90; vol. 2, p. 89, ch. 63; p. 127, ch. 121; vol. 3, p. 395, ch. 40, § 2; p. 403, ch. 41, § 10; vol. 4, p. 406, ch. 9. This last was passed in 1734. By the Constitution of the U. S., art. 1, § 8, clause 5, ante, p. 16, power is given congress "to fix the standard of weights and measures." On the 26th of December, 1792, the legislature of *Virginia* passed an act (in 2 R. C. p. 120, ch. 215,) referring to the act of 1734, and declaring that it should remain in force until congress

2 R. C. p. 19, § 2.
1846-7, p. 15,
ch. 13, § 1.

§ 1. The weights, measures and balances received by this state, under a resolution of congress, approved the fourteenth day of June, one thousand eight hundred and thirty-six, and an act of congress approved the seventh day of July eighteen hundred and thirty-eight, shall be kept in the capitol in a room to be assigned by the governor and fitted up for the purpose, under his direction. They shall be the public standards of weights and measures in this state.

1846-7, p. 15, § 5.

§ 2. The clerk of the council shall be *ex-officio* superintendent of the said standards, and have charge of them, until the governor shall deem it proper to appoint another superintendent, in which case the governor may allow a reasonable compensation to the person so appointed.

Id. § 2.

§ 3. The court of every county and corporation shall provide, within one year from the time when this chapter takes effect, and thereafter constantly keep, for the use and at the charge of such county or corporation, the following weights, measures and balances, conformable to the said standards, and sealed by said superintendent, that is to say: Of dry measure, one half bushel, one peck, and one half peck, made of copper, pewter or wood; of wine measure, one gallon, one half gallon, one quart, one pint, one half pint, and one gill, made of copper or pewter; one set of brass weights to four pounds, computed at sixteen ounces to the pound, with suitable scales and steel beam; one set of iron weights from one pound to fifty pounds; also of long measure, one yard, made of brass, copper or steel, and a set of troy weights, from the lowest denomination to eight ounces. All said measures, weights and balances, shall be verified by the superintendent, and sealed by him in a durable manner, according to its true weight, capacity and length.

2 R. C. p. 120,
§ 4: p. 196, § 15.
1846-7, p. 15, § 2.

§ 4. The said weights, balances and measures provided for each county or corporation, shall be kept in such place and by such person as may be appointed by the court; such person to be the sealer of weights and measures for the county or corporation.

§ 5. Once in every ten years from the time at which they are first sealed, the said sealers of weights and measures shall cause them to be tried and proved by the said public standards, under the direction of the superintendent, and sealed by him anew; and if any sealer of weights and measures shall fail to do so, he shall forfeit one hundred dollars.

made provision on the subject. Congress, by a resolution, approved the 14th of June, 1836, (Acts of congress, 1835-6, p. 255, No. 7,) directed the secretary of the treasury to cause a complete set of all the weights and measures adopted as standards, and either made or in the progress of manufacture, for the use of the several custom houses, and for other purposes, to be delivered to the governor of each state in the Union, or such person as he may appoint, for the use of the states, respectively, "to the end that an uniform standard of weights and measures may be established throughout the *United States*." And by an act, approved the 7th of July, 1838, (Acts of congress, 1837-8, p. 114, § 7,) it was directed "that the secretary of the treasury cause to be made, under the superintendence of Mr. *Hassler*, one standard balance for each state, and when completed, that he cause them to be delivered to the respective governors for the use of the respective states."

§ 6. Every sealer of weights and measures shall, at least once 2 R. C. p. 126, § 4. in every year, advertise in some convenient newspaper, or put up notifications, in different parts of the county or corporation, of the times and places when and where he will attend, for the purpose of trying and proving such balances, weights and measures as may be brought to him for that purpose. Those which may be found, or can be made to agree with the standards, shall be sealed by him accordingly, and he shall deface and destroy all such as do not and cannot be made to agree therewith.

§ 7. The said sealer for each county or corporation, shall once in every three years go to the houses, stores or shops of every person within the town or county (by whose court he was appointed,) who uses balances, steelyards, platform balances, weights or measures, for the purpose of buying and selling, and who has failed for three years to bring or send them in at the times and places notified by him, and also to all hay scales and platform balances kept for public use; and there try and prove such scales, balances, steelyards, weights or measures, and seal or deface and destroy them, as may be proper. In the cases mentioned in this section, the sealer of weights and measures shall have double the amount of his regular fees.

§ 8. The court may appoint more than one sealer of weights and measures for its county or corporation, and assign to each the district within which he shall act. A full set of weights, measures, and balances, shall be provided for each district, and each sealer shall act only in his own district.

§ 9. The superintendent and each sealer of weights and 1a. measures shall have five cents for every weight or measure, or scale beam and balance, and ten cents for each steelyard and the beams and poises thereof, tried, proved, and sealed, or defaced and destroyed by him; the superintendent to be paid by the sealer of weights and measures of the county or corporation for which the service is rendered, and the sealers of weights and measures to be paid by the owners respectively, for whom the service is rendered.

§ 10. The seals, and other things necessary to enable them to perform their duty, shall be procured by the superintendent and the sealers. The cost of such as are procured by the superintendent shall be paid on the order of the governor, and of such as are procured by a sealer of weights and measures, as also the fees paid by him to the superintendent, shall be a charge on the county or town by whose court he was appointed.

§ 11. A person may call at any time upon the superintendent in *Richmond*, or a sealer of weights and measures in his county or corporation, to try and prove the weights and measures of such person, he paying therefor the regular fees, or double fees, if the service be rendered at his own house, store, or shop.

2 R. C. p. 120, § 3. § 12. If any county or corporation court shall refuse to provide and keep the weights, measures, and balances prescribed by law, every justice sitting when such refusal occurs and concurring therein, shall forfeit one dollar per month thenceforth, until they shall be provided.

§ 13. If the superintendent, or any sealer of weights and measures shall fail to perform any duty imposed on him, he shall forfeit twenty dollars for each offence.

Id. p. 119, § 2.

§ 14. If any person shall sell or offer to sell any commodity by, or keep for buying and selling, any scales, balances, steel-yards, weights, or measures, not sealed according to law, he shall forfeit, for each offence, a sum not exceeding ten dollars.

§ 15. Once in every five years the directors of each bank shall have the weights used in such bank tried, proved, and sealed, either by the superintendent, or a sealer of weights and measures.

§ 16. No tender by any bank in the state, of gold weighed with the weights not so sealed, shall be legal. The payer to, or receiver from, any bank, of gold, may require that it shall be weighed in each scale, and the mean weight resulting therefrom shall be deemed the true weight.

CHAPTER XC.

OF WEIGHING AND KEEPING LIVE STOCK.

SEC.	SEC.
1. } Live stock, where weighed; weigh-	8. When live stock to be weighed;
2. } master appointed.	penalty for selling without.
3. } Weighmaster's bond; how he may	9. Fees of weighmaster.
4. } be removed.	10. Weighmaster to return to auditor
5. He may appoint deputies, &c.	quarterly accounts.
6. } His duties, and penalty for failure.	11. Rights of those keeping live stock
7. }	for hire.

1843-4, p. 60, ch.
81, § 1.
1844-5, p. 63, ch.
74.
1845-6, p. 18, ch
14.

§ 1. The houses and lots near the city of *Richmond*, erected and purchased under the act of assembly, passed the third day of February in the year eighteen hundred and forty-four, entitled an act concerning the weighing of live stock brought to the city of *Richmond*, that on the twentieth of February eighteen hundred and forty-five, entitled an act authorizing the purchase of a lot for the accommodation of live stock taken to the scales to be weighed, and the act amendatory thereof, passed on the thirteenth day of January eighteen hundred and forty-six, shall be continued for the purposes aforesaid.

1843-4, p. 60, ch.
81, § 8.

§ 2. The governor shall, annually, appoint a weighmaster to superintend the same, and shall fill any vacancy in the

office. He shall also provide proper scales and weights for weighing live stock brought there to be weighed.

§ 3. The weighmaster shall give a bond in the penalty of five hundred dollars, to be approved by the governor, and filed in the office of the secretary of the commonwealth. ^{1843-4, p. 60, ch. 81, § 4. See ante, p. 88, ch. 13, § 8.}

§ 4. The weighmaster may be removed by the governor for misbehaviour, incapacity, or neglect of official duty.

§ 5. He may appoint one or more deputies to aid him, or act in his stead, who shall take the oaths of office. The said deputies shall be paid by the weighmaster, who shall be responsible for any violation or neglect of duty by them. ^{1843-4, p. 60, ch. 81, § 6.}

§ 6. The weighmaster, by himself or a deputy, shall weigh, without unnecessary delay, all live cattle and hogs brought to him to be weighed, and ascertain the gross weight thereof. He shall enter, in a well-bound book, a list of live stock weighed by him, the kind, and weight thereof, the time when weighed, and the charge therefor. ^{1843-4, p. 60, § 2, 5, 7. 1844-5, p. 63, ch. 75.}

§ 7. If the weighmaster delay for twenty-four hours to weigh any such live stock, he shall pay to the owner thereof ten cents on every head of such stock for each hour delay beyond twenty-four hours, excluding Sunday. ^{1843-4, p. 61, § 5.}

§ 8. If any person shall sell or buy, unless for a certain price per head, any live cattle for the shambles, and within five miles of the city of *Richmond*, until such cattle have been weighed in gross as aforesaid, he shall forfeit one dollar for every head of such cattle; one-half of which penalty shall be to the informer. ^{1843-4, p. 61, § 5, 9.}

§ 9. There shall be paid to the weighmaster three cents per hundred pounds on each head of cattle, and three cents for each hog so weighed by him. But the governor may prescribe regulations for the collection thereof, and he may alter such charges, so as they be not higher than will be sufficient to produce a nett revenue of twenty *per cent.* on the cost of the said house and lot, and fixtures thereat. ^{Id. § 3.}

§ 10. The weighmaster shall, quarter-yearly, return to the first auditor an abstract from his book of the stock weighed by him, and an account of the charges thereon. He may retain two-thirds of such charges for his own compensation, and shall pay the other third forthwith into the treasury. If he violate this section, he shall forfeit fifty dollars for each offence. ^{Id. § 3, 7.}

§ 11. Persons keeping live stock for hire shall have the same rights and remedies for the recovery of their charges therefor as innkeepers have. ^{1843-4, p. 60, ch. 80.}

Title 27.

VESSELS AND SEAMEN.

CHAP. 91. Of wrecks.

92. Of pilots.

93. Of unlading ballast and burying the dead from vessels; and of landing therefrom sick seamen or passengers without maintenance.

94. Of seamen who desert their vessel.

95. Of harbour masters and dock masters.

CHAPTER XCI.

OF WRECKS.

Sec.

1. } Commissioners of wrecks appointed and to give bonds.

2. }
3. } Commissioners to command assistance, and how it is enforced.4. }
5. }
6. } Their duty and power in preserving property.7. }
8. Inventory thereof; compensation of commissioners and others.

9. Pay for services to be to commissioner. Exception.

Sec.

10. When other persons not to interfere with vessel in distress, &c.

11. }
12. } Duty of commissioner to advertise the wreck and sell property saved.13. }
14. } Proceeds of sale to be paid into treasury. Penalty for failure.15. }
16. } Copy of act to be posted up. Penalties on commissioners.17. }
17. }
alties on commissioners.

2 R. C. p. 132, ch. 219, § 1.

§ 1. The governor from time to time shall appoint one or more commissioners of wrecks in each county bordering on the sea or bay shore, and may remove any such commissioner for incapacity, neglect of duty or misconduct, and appoint another in his stead.

Id. § 2.
See ante, p. 88, ch. 13, § 8.

§ 2. Every such commissioner shall give bond in the court of his county, in the penalty of one thousand dollars.

2 R. C. p. 132, ch. 219, § 1.

§ 3. Every commissioner, on being informed that any vessel is stranded or in danger of being stranded, or that any shipwrecked property has been discovered on any water or shore in his county, shall command any constable or other person to summon so many men as may be necessary for the assistance of such vessel or the preservation of such property.

Id.

§ 4. If there be any merchant ship or vessel riding near, the commissioner may demand of the commanding officer thereof the assistance of his boats and of so many hands as can conveniently be spared to aid in saving any vessel (so stranded or in danger) or her cargo.

Id.

§ 5. If any such officer shall fail to give such assistance, he shall forfeit three hundred dollars, and if any such constable or other person commanded to summon assistance, or any person summoned by either of them, shall fail, without sufficient excuse, to obey such command or summons, every such person shall forfeit five dollars.

§ 6. The said commissioners shall take possession of, and preserve all property saved, from any such vessel, or cast on shore from any shipwreck, which may not be in the custody of the owner or his agent; and if there be in the possession of any other person any property that has been taken from such vessel in distress, or cast on shore from any wreck, such person shall upon demand deliver said property to the owner, or to the commissioner of wrecks, or to their order; or shall, in default thereof, pay to said owner three times the value of said property.

2 R. C. p. 132, ch. 219, § 1.

§ 7. Any such commissioner may employ as many persons ^{1a.} as he may think necessary to preserve and guard any such property, and may suppress all violence and tumult; and if any person shall disobey any lawful order of the commissioner, he shall forfeit ten dollars.

§ 8. Every commissioner of wrecks shall take an inventory ^{1a.} of all the property that shall come into his possession as aforesaid, and be paid, or secured to be paid five *per cent.* on the value or sales of said property, when the amount or value thereof does not exceed ten thousand dollars, and two and a half *per cent.* on all additional sums. The labourers employed in saving said property and guarding the same shall receive not exceeding four dollars per day.

§ 9. No person interested in any such vessel or property ^{1a.} shall be bound to pay to any other than a commissioner of wrecks, any charge for services or expenses, unless in respect to services rendered or property secured before the arrival of a commissioner, in which case the commissioner shall determine the compensation to be paid, and his award in writing shall be binding.

§ 10. If any person shall, after the arrival of a commissioner, without his directions, or those of the owner or agent, enter, or attempt to enter, on board any vessel in distress, or take, detain, or interfere with any property saved from any such vessel, or cast on shore from a wreck, or shall endeavour to hinder the saving such vessel or property, or shall deface the marks on any such property before the commissioner has taken an inventory thereof, every such person shall be punished by fine at the discretion of a jury.

§ 11. If the owner of any such property or his agent shall ^{1a.} not be present, the commissioner shall publish the particulars of the wreck, with a description of the vessel, and of the property saved or recovered, for at least four weeks, in such mode as may be best to make the same known to the owner. If he shall neglect to do so, he shall forfeit to said owner fifty dollars.

§ 12. The commissioner may sell at public auction without ^{1a.} delay, to the best advantage, so much of any such property as may be perishable, and after thirty days any other part of

such property which may be necessary to pay duties paid by him, or for which he may be liable to the *United States*.

2 R. C. p. 132, ch.
219, § 1.

§ 13. If no person shall claim said property within three months after the publication aforesaid, the said commissioner shall sell the whole of such property (not before sold) at public auction, after giving notice of the time and place of sale, in some newspaper printed near the place of sale.

Id,

§ 14. An account of sales of the property so sold, and of the charges, shall be transmitted by such commissioner to the first auditor, and the balance appearing due on such account (after deducting the charges) shall be paid into the public treasury, for the benefit of the owner of said property, who, upon proving his ownership at any time afterwards, shall have the same paid to him.

Id.

§ 15. If any commissioner shall fail for sixty days after the sale of any such property, under the thirteenth section, to transmit an account of sales thereof, and pay the balance due thereon into the public treasury, (unless he shall have previously settled therefor with the owner,) the same may be recovered for the commonwealth in the manner provided by the forty-second chapter.

Ante, p. 222, ch.
42.

Id.

§ 16. A copy of this chapter shall annually be posted by the commissioners of each county at the front door of their courthouse.

Id.

§ 17. Any commissioner who shall be guilty of any wilful neglect or violation of his duty shall forfeit to any party, injured thereby, three times the amount of his damages.

CHAPTER XCII.

OF PILOTS.*

SEC.		SEC.	
1.	Board of commissioners to examine pilots. How appointed to and removed; when to grant branches.	11.	Penalty for piloting vessel without authority; exception.
4.		12.	
5.		13.	When, and what, vessels to take pilots; other than coasters.
10.	Pilots arranged in classes; to keep boats, &c.; penalties on them.	14.	Coasting vessels.
8.		15.	What vessels not required to take a pilot.
9.	Apprentices of pilots; how branch is vacated.	16.	Same subject as § 14.
10.			

* The act of congress approved the 7th of August 1789 (1 Story's Laws U. S., p. 33,) provides "that all pilots in the bays, inlets, rivers, harbours and ports of the *United States* shall continue to be regulated in conformity with the existing laws of the states respectively wherein such pilots may be, or with such laws as the states may respectively hereafter enact for the purpose, until further legislative provision shall be made by congress."

An act of congress approved the 2d of March 1837 (1836-7, p. 28, ch. 22) pro-

SEC.		SEC.	
17. }	Rates of pilotage to, and from va-	33.	Compensation to commissioners
18. }	rious places, on merchant vessels		and their clerk in such cases.
19.	Same on vessels of war.	34.	Penalties on pilots for demanding
20.	Forfeiture to pilots for concealing		more than lawful fees, &c.
	name of vessel.	35.	Refusing to pilot a vessel, or mis-
21. }			conduct while in charge of one.
22. }	Special allowances to pilots.	36.	Proceedings against a pilot who is
23. }			suspended.
24.	Pilotage from within the capes.	37.	Pilot to carry a vessel into quaran-
25.	First pilot of the proper class to		tine when she has dangerous dis-
	have preference.		ease on board.
26.	Pilot to offer services to what ves-	38.	Pilot to shew his branch, if requir-
	sels.		ed; penalty on failure.
27.	Who liable to pilot for pilotage.	39.	Pilots now commissioned to con-
28. }	Pilot's accounts; how collected;		tinue to act as pilots.
to }	controversy with them decided	40.	Coal trade free of pilotage as to ves-
32. }	and judgment enforced; its effect.		sels inward and outward bound.

Board of commissioners to examine pilots, &c.

§ 1. The court of *Elizabeth City* county shall appoint five persons to constitute a board of commissioners to examine persons applying for branches as pilots, who shall meet at the town of *Hampton*; and the court of *Norfolk* county an equal number, to constitute a board of commissioners for the same purpose, to meet at the city of *Norfolk*; and the court of *Alexandria* county an equal number, to constitute a board of commissioners for the same purpose, to meet in the town of *Alexandria*. 2 R. C. p. 121, ch. 216, § 1. 1820-21, p. 40, ch. 41, § 1. 1821-2, p. 24, ch. 24, § 1. 1823-4, p. 30, ch. 27. 1824-5, p. 28, ch. 33, § 1. 1847-8, p. 89, ch. 119, § 1.

§ 2. The court by which any commissioner is appointed, may remove him for incapacity, neglect of duty, or misconduct, and may fill a vacancy happening in the office of commissioner from any cause. 2 R. C. p. 121, § 3. 1821-2, p. 24, § 4.

§ 3. No commissioner shall be appointed or removed unless when a majority of the acting justices of the county are present. Id.

§ 4. Every free white person applying to either of said boards to be examined, shall produce a certificate of the court of the county or corporation where he resides, that he is of honest demeanour and a citizen of this state, and furnish proof of his having served as an apprentice to some pilot of this state for five years. If the board of examiners find him qualified to act as a pilot, they shall take from him a bond in the penalty of five hundred dollars, and grant him a branch on his paying to said board five dollars, and they shall return the said bond to the clerk of their county court. 2 R. C. p. 121, § 4. p. 128, § 35.

Classes of pilots; duties of pilots and their apprentices; who not to act as such.

§ 5. All pilots shall be arranged into three classes, and Id. p. 122, § 5.

vides that "it shall and may be lawful for the master or commander of any vessel coming into or going out of any port situate upon waters which are the boundary between two states, to employ any pilot duly licensed or authorized by the laws of either of the states bounded on the said waters, to pilot said vessel to or from aid port."

every branch shall designate whether the pilot thereby commissioned, belongs to the *first, second* or *third* class.

2 R. C. p. 121.

§ 6. Pilots of the first class may pilot and conduct vessels of every burthen and description; those of the second class shall be confined to vessels whose draught of water does not exceed twelve feet, and those of the third class to vessels whose draught of water does not exceed nine feet.

Id. p. 123, § 12.
1835-6, p. 65, ch.
90, § 10.

§ 7. Every pilot, or the company to which he belongs, shall keep one sufficient boat of at least eighteen feet keel, which he shall be attached to and cruise in, and any one acting as a pilot, without having such a boat, shall forfeit one hundred and fifty dollars.

2 R. C. p. 123,
§ 12.

§ 8. If any pilot boat shall not have her name and the port to which she belongs marked ten feet below the head of her foresail, on each side, in letters of at least nine inches long, the owner thereof shall have no fees of pilotage.

Id. § 13.

§ 9. If any apprentice of a pilot, being examined by the board of commissioners which appointed his master, shall be judged by them qualified, they may endorse on a copy of his master's branch the name of the pilot boat, her port, and the class to which said master belongs, and thereupon such apprentice may conduct and pilot vessels as his master might do, and subject to the same regulations.

Id. § 7,

§ 10. If any such pilot shall remove from the state, his branch shall be thereby vacated.

Id. § 7, 8, 10.
1835-6, p. 65, § 10.
1846-7, p. 77, § 9.

§ 11. If any person not authorized by law, or any pilot, after removing from the state, shall undertake to conduct or pilot a vessel to or from sea, or to or from any of the places hereinafter mentioned, he shall forfeit two hundred dollars.

Id.
1820-21, p. 41, § 5.

§ 12. The preceding section shall not prevent any pilot of this state, or of *Maryland*, or any other person, from assisting a vessel in distress, that he may fall in with, having *Cape Henry* in view, and no authorized branch pilot appearing, nor from conducting said vessel into *Hampton Roads*, or any other harbour. Any such pilot, or other person aforesaid, shall be entitled to full pilotage; but if he is not a pilot, he shall deliver up said vessel to any authorized pilot, of this state, who may offer to take charge of her, and then shall receive from such pilot half the pilotage.

When and what vessels to take pilots.

2 R. C. p. 123,
§ 15.
1820-21, p. 40, § 2.
1835-6, p. 64, § 1.
1846-7, p. 76, § 3.
1848-9, p. 81, ch.
126.

§ 13. The master of every vessel, (other than a coasting vessel,) inward bound from sea, shall take the first *Virginia* pilot that offers his services, *Cape Henry* bearing west of south, and any such vessel, outward bound, shall take the first that offers his services west of *Old Point Comfort*; and any master refusing to do so, shall immediately pay to the said pilot full pilotage from the place where said vessel was spoken, into *Hampton Roads*, or from *Hampton Roads* to sea, as the case may be. But no master of a vessel coming from sea shall be

compelled to take a pilot after arriving within the line at which *Cape Henry* bears west of south.

§ 14. Vessels sailing under a coasting license, of the burthen of seventy tons or more, coming from or going to sea, shall be subject to the same regulations and pilotage as registered vessels belonging to citizens of the *United States*, except as follows: *First*: Where such vessel is spoken by a pilot, the master may either elect to take the pilot and pay the pilotage for a registered vessel, or to pay said pilot seven dollars and fifty cents and discharge him. *Second*: The pilots may appoint agents; one for *Richmond* city, one for *Norfolk* city, one for *Fredericksburg*, and one for *Alexandria*, with power severally to grant licenses to coasting vessels trading to the rivers on which such places severally lie; for which licenses such agents shall receive ten cents per ton for one year. Coasting vessels having such licenses shall be free to sail without pilots to or from sea.

2 R. C. p. 126,
§ 29, 30.
1819-20, p. 21, ch.
24, § 2.
1820-21, p. 40, § 3.
1835-6, p. 64, § 4.
1846-7, p. 76, § 5.

§ 15. No master shall be required to have a pilot to conduct his vessel or steamboat above *Hampton Roads*, *Yorktown*, *Mobjack* bay, *Urbanna*, or *Smith's Point* on the *Potomac*, but if he desire a pilot, he shall not employ any other than a branch pilot. If he employ any other, he shall pay to any branch pilot who may have offered his services full pilotage (going or returning) between any place aforesaid and the place of his destination.

2 R. C. p. 123,
§ 14, 28.
1819-20, p. 21, § 2.
1846-7, p. 76, § 4.

§ 16. The master of any coasting vessel wanting a pilot to any port in this state, shall signify it by a signal at his foremast or foretopmast head; whereupon a pilot shall repair to and pilot said vessel.

2 R. C. p. 126,
§ 31.

Pilotage and other allowances to pilots.

§ 17. Pilots shall have pilotage at the following rates: For every registered vessel owned by a citizen of the *United States*, and for every vessel owned by a citizen or subject of any foreign state whose vessels are by treaty placed on the same footing as vessels of the *United States*, as follows: If the vessel be boarded or spoken by a pilot forty miles or more east of *Cape Henry*, there shall be paid from sea to *Hampton* roads, for full pilotage, two dollars and twenty-five cents for each foot of water the vessel draws; if less than forty and not less than twenty miles, two dollars per foot; and if less than twenty miles, one dollar and fifty cents per foot. There shall be paid from *Hampton* roads, as follows: to sea, one dollar and twenty-five cents per foot; to *Norfolk* and *Portsmouth* thirty-eight cents per foot; to *Sleepy Hole* or *Look Out*, fifty-three cents per foot; to *Pagan* creek, eighty-eight cents per foot; to *Jamestown* or any place between *Pagan* creek and *Jamestown*, one dollar and forty-four cents per foot; to *City Point* or *Bermuda Hundred*, or any place between them and *Jamestown*, two dollars and thirty-nine cents per foot; to *Turkey Island* two

2 R. C. p. 124,
§ 18, 19; p. 127,
§ 32.
1819-20, p. 21, § 1.
1820-21, p. 40, § 3.
1830-31, p. 113,
§ 1.
1835-6, p. 64, § 1.
1846-7, p. 75, § 1.

dollars and ninety-eight cents per foot; to *Warwick* or any place between there and *Turkey Island*, three dollars and eighty-four cents per foot; to *Richmond* or any place between there and *Warwick*, four dollars and thirteen cents per foot; and the same rates of pilotage shall be paid from the said places respectively down to *Hampton roads*: On any such vessel bound to or from *York river*, as follows: from sea to *Yorktown*, twelve dollars; from *Yorktown* to sea, seven dollars and fifty cents; from *Back river* or *Egg island* to *Yorktown*, six dollars; from *Yorktown* to *West Point*, one dollar and thirty-three cents per foot; to *Cumberland*, one dollar and sixty-three cents per foot; to the highest landing on *Pamunkey river* two dollars and seven cents per foot; to *Shepherd's* one dollar and forty-seven cents per foot; to *Meredith's*, *Moor's*, or the highest landing on *Mattapony*, one dollar and ninety-seven cents per foot; from sea to any river on *Mobjack bay*, twelve dollars, and from *Mobjack bay* to sea, seven dollars and fifty cents; from sea to *Urbanna*, fifteen dollars, and from *Urbanna* to sea, twelve dollars; from *Urbanna* to *Tappahannock*, one dollar and forty cents per foot; to *Naylor's Hole* one dollar and thirty-eight cents per foot; to *Leeds* or *Micou's* two dollars and thirteen cents per foot; to *Port Royal*, two dollars and ninety-seven cents per foot; to *Fredericksburg*, three dollars and ninety cents per foot; from sea to *Piankitank* fifteen dollars; and from *Piankitank* to sea, twelve dollars. And on each vessel to or from the *Potomac*, as follows: From sea to *Smith's Point* on south *Potomac*, twenty-five dollars coming in, and twenty dollars and eighty-cents going out; and between the following places the following rates, both coming in and going out: From *Smith's Point* aforesaid, to *Coan* or *Yeocomico*, seventy-four cents per foot; to *Machodack*, eighty-four cents per foot; to *Upper Machodack*, one dollar and twelve cents per foot; to *Nangomy*, one dollar and thirty-seven cents per foot; to *Boyd's Hole*, one dollar and forty-seven cents per foot; to *Quantico*, one dollar and fifty-eight cents per foot; to *Occoquan*, one dollar and seventy-eight cents per foot; to *Piscataway*, two dollars and ten cents per foot; to *Alexandria* two dollars and forty-eight cents per foot; and to the *Eastern branch*, two dollars and sixty-two cents per foot.

2 R. C. p. 125,
§ 20.
1846-7, p. 76, § 2

§ 18. All foreign merchant vessels, not placed by treaty on the same footing with vessels of the *United States*, shall pay one fourth more than the rates hereinbefore prescribed.

2 R. C. id.
1830-31, p. 113,
ch. 43, § 4.
1846-7, p. 77, § 8.

§ 19. The rates of pilotage for vessels of war shall be as follows: Between sea and *Hampton Roads*, two dollars and seventy-five cents per foot; and between *Norfolk* or *Portsmouth* and *Hampton Roads*, one dollar and twenty-five cents per foot, both going out and coming in; between all other places hereinbefore specified, the rates of pilotage shall be the same as for merchant vessels of the *United States* of like draught, with fifty cents per foot additional, for all such as draw more than eighteen feet.

§ 20. If the master of any vessel shall conceal or obscure the name thereof, or refuse to disclose the same when spoken by a pilot, he shall forfeit to said pilot five dollars. 1846-7, p. 76, § 6.

§ 21. If any pilot notified to attend a vessel shall be detained, he shall have, in case of a merchant vessel, one dollar and seventy-five cents, and in case of a vessel of war, three dollars for each day's detention. 2 R. C. p. 125, § 21. 1846-7, p. 77, § 7, 8, 33.

§ 22. Every pilot who shall attend any vessel with his boat at the request of the master or owner, shall have seven dollars per day, and every master carrying any pilot to sea, shall pay him the same wages as the mate of the vessel receives. 2 R. C. p. 126, § 23, 24.

§ 23. If any vessel having no pilot on board, shall follow another that has a pilot, such pilot shall have half pilotage for the vessel so following. Id. p. 123, § 15.

§ 24. If any pilot offers his services within the capes to a vessel from sea and is received, he shall have only half the pilotage prescribed for conducting a vessel from sea. Id. p. 126, § 25.

Pilot first meeting vessel at sea to have preference.

§ 25. The first pilot who meets a vessel coming in, which his branch entitles him to conduct, shall have the right to take charge of and conduct her into York river, Hampton Roads, Mobjack bay, or to Urbanna, or Smith's Point aforesaid, and to receive the pilotage allowed by law. Id. § 14.

§ 26. Every pilot cruising or standing out to sea, shall offer his services to the vessel of his class nearest to land, or in most distress. Id. § 15.

§ 27. The master and owner of every vessel shall each be liable to the pilot for his pilotage, and other allowances; and also the consignee or supercargo of any vessel not owned by a citizen of the state. Id. § 26.

Enforcing payment of pilots' accounts, and settling controversies with them.

§ 28. Pilots may state their accounts, (verified by affidavits,) and lodge them with their agents in Norfolk, Richmond, Fredericksburg, or Alexandria for collection; and if any person, liable on any such account, shall fail to pay the amount thereof to the agent or to the pilot himself, within three days after demand made, he shall pay five dollars (in addition to said amount) to said pilot. 2 R. C. p. 128, § 36. 1819-20, p. 21, § 3. 1835-6, p. 64, § 6. 1846-7, p. 76, § 6.

§ 29. Each board of commissioners may decide any controversy, between pilots to whom it has granted branches, or between any such pilot and the owner, master, or consignee of any vessel, which may arise under any law concerning pilots. Its decision shall be final. If such decision requires the payment of money, the board shall enter a judgment therefor on the record of its proceedings, and on a copy thereof being put into the hands of any sheriff, constable, or sergeant, 1820-21, p. 40, § 1. 1823-4, p. 30, § 1. 1824-5, p. 28, § 1.

he shall enforce payment thereof, as if it were an execution against the property of the debtor, and have the same fee.

1824-5, p. 28, § 1.

§ 30. But no such judgment shall be entered unless notice of at least ten days has been given of the time and place of trial, and of the claim or charges to be preferred, and where the charge is against the pilot for neglect of duty or violation of law, such judgment shall in no case be for a longer suspension of the branch of the accused than six months, unless where a longer time is expressly prescribed.

2 R. C. p. 123,
§ 16.

§ 31. Nothing herein shall authorize such board to decide upon the liability of a pilot or his apprentice to any party injured by his negligence or misconduct, or to prevent such party from recovering for all damages occasioned thereby.

1824-5, p. 28,
§ 2, 3.

§ 32. Each board shall appoint a clerk, who shall keep a record of its proceedings; and the said commissioners, or any one of them, may administer an oath and issue a summons.

1821-2, p. 24, § 2.
1824-5, p. 28,
§ 2, 3.

§ 33. Each person who shall appear before the board to be examined as a pilot, shall pay to each commissioner present, and also to the clerk, one dollar. When the board makes a decision in a matter of controversy, the person against whom the decision is, shall pay to each commissioner one dollar, and to the clerk fifty cents.

Other penalties on pilots.

2 R. C. p. 127-8,
§ 34.
1819-20, p. 21,
§ 2, 3, 4.

§ 34. If any pilot shall, for any service, demand or receive less than the lawful fees, he shall forfeit the amount of said lawful fees, which may be recovered by any person who will claim the same, by warrant, or by motion, one-half of which recovery shall be paid to the board of commissioners of that county in which the branch of said pilot was granted. Such pilot may moreover be suspended by said board not exceeding six months. And if any pilot shall demand and receive greater fees than are allowed by law, he shall forfeit to the master or owner double the amount of fees paid to him in any such case, to be recovered in the same manner.

2 R. C. p. 123,
§ 16; p. 126, § 27.
1819-20, p. 21, § 4.
1824-5, p. 28, § 5.

§ 35. If any pilot or apprentice, without sufficient excuse, shall refuse, when requested by the master, to go on board of any vessel and pilot her, or shall be intoxicated, or guilty of any other misbehaviour or neglect of duty, while in charge of a vessel, he shall be suspended not less than three nor more than six months.

Id.

§ 36. Whenever any pilot or apprentice shall be suspended, the fact shall be published in some newspaper printed in *Norfolk*, the cost of which shall be paid by such pilot; and if any pilot so suspended shall be found on board of any vessel as a pilot, or shall offer to conduct any such vessel as such, he may be dismissed from such vessel by any pilot authorized to pilot her, to whom all the fees of pilotage shall be paid; and the board which gave him his branch shall issue a warrant, directed to any sheriff, or other officer, requiring him to appre-

hend such suspended pilot or apprentice, and detain him in custody until bond shall be given in the penalty of not less than one hundred dollars, with condition for his good behaviour during his suspension, which said bond shall be taken by the officer, and returned by him to the court of his county, and may be enforced by action, *scire facias*, or motion. Should such bond not be given, the officer shall confine him in the most convenient jail until it is given.

See ante, p. 88,
ch. 13, § 8.

When pilot to carry vessel into quarantine.

§ 37. Any pilot first meeting a vessel coming from sea, shall enquire into the health of her crew, and the place from which she last came, and if she has any dangerous infectious disease on board, or comes from any place from which vessels coming are required to perform quarantine in this state, or any port thereof, he shall direct said vessel to follow his boat, and carefully conduct her to the nearest place appointed for vessels to perform quarantine; and shall, as soon as possible, give notice thereof to the health officer of the port nearest thereto. For which service said pilot shall be entitled to an extra fee of seven dollars beyond the regular fees of pilotage, to be paid by the master or owner of such vessel; and if any pilot shall be permitted to go on board a vessel without being informed of a contagious disease being on board, and be obliged to remain on board, or perform quarantine in consequence thereof, he shall have three dollars for every day's detention, to be paid as aforesaid.

2 R. C. p. 124,
§ 17.

Where branches have been received heretofore; and as to shewing branches.

§ 38. Each pilot shall, if required, produce his branch at the time of demanding any fees, before he shall be entitled to receive the same.

§ 39. Pilots who received branches under any law prior to this, by virtue of which they are now acting, may continue to act as pilots, have the same fees, and be subject to the same penalties, and the control of the same boards, as if appointed by the board of the county in which their branches were severally granted; or they may have their branches renewed by such boards without charge.

Coal trade free of pilotage.

§ 40. It shall be lawful for all vessels engaged in the coal trade to proceed from or to any place in this state without any charge for pilotage; and should satisfactory evidence be afforded that any vessel is bound to such place in ballast for the purpose of carrying coal, such vessel shall be free from pilotage, both inward and outward bound.

CHAPTER XCIII.

OF UNLADING BALLAST AND BURYING THE DEAD FROM VESSELS;
AND OF LANDING THEREFROM SICK SEAMEN OR PASSENGERS
WITHOUT MAINTENANCE.

SEC.		SEC.	
1.	} Ballast masters and assistants; how to appointed.	10.	Master to produce certificate of ballast master.
4.		11.	Warden of the port of Richmond; how appointed.
5.	} Penalty for refusing to serve or neglect of duty.	12.	} Burial of dead from vessel and landing sick or disabled persons contrary to law; how punished.
6.		13.	
7.	Duties of ballast masters.		
8.	} When and how master of vessel to give notice of ballast to be unladen, &c.		
9.			

2 R. C. p. 298, ch.
245, § 1.

§ 1. The court of every county or corporation, adjacent to any bay or navigable river or creek, shall annually appoint one or more ballast masters to superintend the delivering and unlading of ballast within a district, (embracing places where vessels usually ride in any such bay, river or creek,) to be designated in the order of appointment.

§ 2. Any such ballast master may continue to act until his successor is appointed and qualified.

Id. § 3.

§ 3. If any person appointed ballast master shall fail to act, or if a vacancy in the office shall otherwise happen, the court which made the original appointment shall fill the vacancy.

1839-40, p. 129,
ch. 171.

§ 4. The ballast master appointed by the corporation court of *Fredericksburg* may appoint one or more assistants; and the district of such ballast master and his assistants shall extend from the head of tide water in the *Rappahannock* river, to the point at which the lower county lines of *Caroline* and *King George*, respectively, reach said river. All the provisions of law in respect to ballast masters shall apply to such assistants.

2 R. C. p. 289,
§ 3.

§ 5. If any person appointed ballast master shall, after being served with a copy of the order of the court appointing him, fail to accept such office and take the oaths of office, at or before the term of said court next ensuing his appointment, without reasonable excuse therefor, he shall forfeit sixty dollars.

Id § 5.

§ 6. If any person, after accepting the said office, shall fail in any duty prescribed by law, he shall forfeit sixty dollars.

Id. § 4.

§ 7. Every ballast master, on receiving information that ballast is to be discharged from any vessel within his district, shall go on board such vessel, and attend until the whole is unladed. He shall see that it is brought on shore and laid at some convenient place, where it will not obstruct navigation, nor be washed or roll into the channel. And, thereupon, he shall give to the commander of such vessel a certificate that his ballast has been duly unladed from on board his vessel, on being paid by such commander eighty-three cents per day for each day's attendance.

§ 8. Every commander of a ship or vessel having ballast ^{2 R. C. p. 229, § 6.} to unlade, shall give notice in writing to some ballast master of the district, of the time when he intends to unlade the same. If any such commander shall land or cast overboard any ballast, without having given such notice, or otherwise than according to the directions of a ballast master, he shall forfeit one hundred and fifty dollars.

§ 9. If any commander of a vessel shall intend to discharge ^{1830-31, p. 113, ch. 44, § 1.} his ballast, for the purpose of taking in a cargo, at a place for which no ballast master has been appointed, he may give notice in writing to a justice, or if none resides at or near the place at which the vessel is to load, then to some freeholder, of the time he intends to land his ballast. And upon such justice or freeholder being sworn to discharge the duties of a ballast master faithfully, he shall act as such, and receive the same compensation; and his certificate as a ballast master shall have the same effect as if it had been given by one regularly appointed as such.

§ 10. If a commander of any vessel from which ballast ^{1d. § 2.} has been unladed, shall, when required by any ballast master, justice, sheriff or constable of the district, county or town adjacent to which such vessel may ride, fail to produce the certificate of the ballast master or other person who superintended the unlading thereof, he shall forfeit thirty dollars.

§ 11. The council of the city of *Richmond* may appoint ^{1840-41, p. 132, ch. 131.} port wardens for the port of *Richmond*, prescribe their duties, fix their fees, and make regulations in respect to them not inconsistent with law.

§ 12. When any person shall die on board of any vessel in ^{2 R. C. p. 299, § 7.} this state, the master thereof shall cause the body to be buried above high water mark, and at least four feet deep. If he fail to do so, he shall forfeit one hundred and fifty dollars.

§ 13. If a commander of any vessel shall discharge or cause ^{1d.} to be put on shore in this state any sick or disabled seaman whose term of service has not expired, without making provision for his maintenance, and for proper medical attendance on him, he shall forfeit sixty dollars. And if he shall land from on board his vessel any passenger who has not the means of procuring his maintenance for a month, he shall forfeit fifty dollars.

CHAPTER XCIV.

OF SEAMEN WHO DESERT THEIR VESSEL.

SEC.

1. Warrant to issue against runaway seaman, &c.

SEC.

2. When such seaman to be confined in jail.
3. When he may be discharged.

2 R. C. p. 131, ch.
218, § 1, 2.

2 Va. Cas. 276.

§ 1. If any seaman or mariner, who is under a contract in writing to serve on board of any merchant vessel, or any apprentice who is lawfully bound to the master or owner of any such vessel, for the purpose of being taught to be a seaman or mariner, shall desert, or absent himself without lawful permission, from such vessel, any justice, upon complaint thereof being made by any officer of such vessel, shall issue his warrant to apprehend such seaman, mariner or apprentice, and bring him before the same or some other justice.

2 R. C. p. 131, ch.
218, § 1, 2.

§ 2. The justice before whom the complaint is tried, shall, if it be proved, commit such seaman, mariner or apprentice, to the jail of his county or corporation, there to remain until he shall be delivered to the master or commander of such vessel, or until she shall sail upon her voyage.

Id.

§ 3. But if it appear that any such seaman, mariner or apprentice has been cruelly treated while on board such vessel by the master thereof, or that there is good ground to apprehend danger to his life, or to limb or health, from the master, should he be compelled to go on board such vessel, the said justice may discharge him from custody. The officer making the complaint shall, in either case, pay the costs of the arrest and imprisonment.

CHAPTER XCV.

OF HARBOUR MASTERS AND DOCK MASTERS.

Of harbour masters.

SEC.

- | | | |
|----|---|--|
| 1. | } | How appointed and their districts. |
| 2. | | |
| 3. | | |
| 6. | | |
| to | } | Their duties. Penalties on them and on masters of vessels disobeying them. |
| 6. | | |

Their fees.

- | | | |
|----|---|--|
| 7. | } | To be paid on vessels other than coasting vessels; and what on them. |
| 8. | | |

Who to superintend county dock in Norfolk.

SEC.

- | | | |
|-----|---|--|
| 9. | } | Harbour master to be appointed therefor; his duties and penalty for failure. |
| 13. | | |

Dock master at Richmond.

- | | |
|-----|--------------------------------------|
| 14. | No harbour master for Richmond dock. |
| 15. | How dock master therefor appointed. |

Of harbour masters.

2 R. C. p. 128, ch.
217, § 1.
1820-21, p. 41, ch.
42, § 1, 6.

§ 1. The court of any county or corporation, except the city of *Norfolk* and town of *Alexandria*, and the councils of the said city and town, may at any time appoint one or more harbour masters, and shall take from each person so appointed, a bond to the commonwealth in the penalty of five hundred dollars.

Id.

§ 2. Every harbour master shall hold his office at the pleasure of the court or council which appointed him. If

appointed by a corporation court, he shall act within its jurisdiction, if by a county court, he shall act in that part of the county which is without such jurisdiction.

§ 3. Each harbour master shall cause every vessel coming within his jurisdiction to moor as soon as may be, and at such place as he may judge best for the general safety, such place, in the ports of *Norfolk* or *Portsmouth*, not being within fifty fathom of any wharf. He shall not permit any vessel to ride at single anchor longer than one tide, and shall require the master of any vessel, as soon as may be, after coming to anchor, (not exceeding twenty-four hours,) to rig in his jib booms, spritsail yards and all fore and aft spars, and have his lower and topsail yards topped, so that the passage of other vessels and the boats of any ferry shall not be obstructed. He shall also attend to the unmooring of any vessel, and if a vessel shall by stress of weather or other accident be driven from her mooring, he shall attend to the remooring her, and for so unmooring or remooring any vessel he shall have half the fees allowed for mooring in the first instance.

§ 4. He shall cause to be removed from any wharf vessels not employed, to make room for those that are employed in receiving or discharging cargo, and also all flats, lighters and other boats, to make room for ferry boats. The master, owner or consignee shall immediately remove the same, or pay the expense of such removal.

§ 5. Any harbour master who shall fail in any duty prescribed herein, or any master of a vessel or boat who shall fail to obey the lawful directions of a harbour master, shall pay a fine not exceeding fifty dollars.

§ 6. Every harbour master shall keep a register of the denomination, name, burthen and master's name of each vessel coming within his controul as such, and the port to which she belongs and that from which she last came, which register he shall submit to the inspection of any applicant.

§ 7. For every vessel arriving at any port other than *Norfolk* or *Portsmouth*, and for every vessel arriving at the port of *Norfolk* or *Portsmouth*, above a point at which the flag staff at *Fort Norfolk* shall bear north-east, the harbour master shall have a fee, if a square rigged vessel, of two dollars, and if fore and aft rigged, one dollar and twenty-five cents.

§ 8. But all vessels sailing under a coasting license of less than seventy-five tons burthen, all vessels engaged in the *Dis-mal Swamp* canal trade, all vessels putting into the port of *Norfolk* or *Portsmouth*, on their homeward passage from up the bay or any river of this state, and all packet boats and steamboats regularly trading for the accommodation and conveyance of passengers, shall be exempt from harbour masters' fees, except that steamboats or vessels shall pay in the harbour of *Richmond* the same fees as other vessels of the same burthen or class.

Who to superintend county dock in Norfolk.

2 R. C. p. 129, 30,
§ 4, 5, 9.
1822-3, p. 46, § 1.

§ 9. One of the harbour masters shall be designated by the court of *Norfolk* county to superintend the county dock in the city of *Norfolk*.

Id.

§ 10. He shall regulate the anchoring and mooring of all lighters, boats and bay and river craft which come within said dock, or anchor at or are secured to the county wharf, for which service he shall have a fee of twenty-five cents from the master or owner.

1826-7, p. 32, § 1.

§ 11. He shall also regulate the entrance and departure of all lighters, however loaded, and all boats loaded with wood or fuel, which come into said dock, or anchor at or are secured to the wharf, so as to prevent confusion and disorder, for which he shall have a fee of twelve and a half cents from the master or owner.

2 R. C. p. 130.
§ 6.

§ 12. Nothing in this chapter shall prevent any bay or river craft or other boat, from going to and anchoring at any private wharf, without fee to any harbour master or superintendent.

Id. § 10.

§ 13. If the said superintendent shall suffer any vessel, lighter or other boat, to lie across the county dock, or before any wharf, so as to obstruct the passage of any ferry boat, he shall forfeit to the county of *Norfolk* ten dollars.

Dock master at Richmond.

1846-7, p. 84, ch.
95, § 1.

§ 14. No harbour master shall have any control over any vessel while entering, remaining in or leaving the *Richmond* dock or any channel leading thereto constructed by the *Richmond* dock company, or the *James* river and *Kanawha* company.

Id. § 2.

§ 15. The company last mentioned may appoint a dock master, or other officer, who shall enforce such regulations respecting the said dock as it may prescribe, consistent with the laws of the state and the police regulations of the city of *Richmond*.

Title 28.

TAVERNS, TRAVEL ON HIGHWAYS AND PATROLS.

CHAP. 96. Of houses of entertainment and bowling saloons.

97. To prevent obstruction to highways and hindrance to travellers.

98. Of patrols.

CHAPTER XCVI.

OF HOUSES OF ENTERTAINMENT AND BOWLING SALOONS.*

SEC.

1. Who deemed to keep an ordinary.
2. A house of private entertainment.
3. How license to keep either obtained.
4. What ordinary keeper to provide, and where he may vend as well as at ordinary.

SEC.

5. How license may be revoked, and for what cause.
6. How license for bowling saloon may be granted.

§ 1. Any person who shall, for compensation, furnish lodging or diet to a person boarding in his house, or provender for a horse feeding in his stable or on his land, (except a drove of live stock, and persons attending it,) and sell by retail wine or ardent spirits, or a mixture thereof, to be drank in or at the place of sale, shall be deemed to keep an ordinary or house of public entertainment.

§ 2. Any person who shall, for a time not exceeding one month, if within, or not exceeding one week, if without a city or town, furnish for compensation lodging or diet to one boarding in his house, or provender for a horse feeding in his stable or on his land, except as aforesaid, shall, if he be not the keeper of an ordinary, according to the preceding section, be deemed to keep a house of private entertainment, unless the place of furnishing the same, when without a city or town, be more than eight hundred yards from a public road or highway.

§ 3. For a license to keep a house of entertainment, the application shall be, when the house is in a town having a corporation court, to such court, and when it is not in any such town, to the court of the county wherein it is. If the court be of opinion that the applicant is sober and of good character, and will probably keep a house orderly, useful, and such as the law requires, it may grant such license; and if the house be in a town, the court, when it grants the same, may, if the applicant desire it, dispense with the necessity of his providing for horses. If any

* The amount of the tax on the license is prescribed in chapter 40, § 2, ante, p. 218; the penalty for keeping an ordinary without license, is in ch. 38, § 9, ante, p. 33; the penalty for keeping a bowling saloon without license, in same chapter, § 4, p. 207. Additional provisions to prevent tippling houses will be found in chapter 38, § 14, 15, 18, 19, ch. 199, § 29, and ch. 201, § 10.

such application be refused, the refusal shall be entered of record, and a license shall not be granted to the applicant before the next May term, unless by a court composed of the justices to whom the first application was made, or a majority of the acting justices of the county or corporation.

2 R. C. p. 280, § 2;
p. 282, § 9.
1839-40, p. 9,
§ 14, 18.

§ 4. Every person licensed to keep an ordinary, or house of public entertainment, shall constantly provide the same with lodging and diet for travellers and their servants, and, unless it be dispensed with as aforesaid, with stableage and provender, or pasturage and provender, (as the season may require,) for their horses. Any such person may, at the place of a muster or public sale, distant a mile or more from another ordinary, with the consent of the proprietor of such place, vend meat or drink as at his ordinary.

2 R. C. p. 282,
§ 9; p. 283, § 14.
1839-40, p. 10,
§ 18.

§ 5. Upon the motion of the commonwealth's attorney for the county or corporation, or of any other person, after ten days' notice to any person so licensed, the court which granted such license may revoke it. It shall always revoke the same when it is satisfied that the object of obtaining the license is not to provide lodging or diet for travellers, but to use it merely as a facility for selling wine or ardent spirits, or a mixture thereof, to be drank in or at the place of sale.

1848-49, p. 6, § 2.

§ 6. A license to keep a bowling saloon or alley, in a town having a corporation court, may be granted by such court, and when it is to be kept not in such town, by the court of the county wherein it is to be kept. Such license may be revoked, like any other license granted under this chapter.

CHAPTER XCVII.

TO PREVENT OBSTRUCTION TO HIGHWAYS, AND HINDRANCE TO TRAVELLERS.

SEC.

1. Penalty for killing trees near a road, or injuring or obstructing roads, bridges, &c.
2. Provisions for passing another on roads, &c.

SEC.

3. Fast driving and horse-racing on roads, &c.
4. Construction of words "road," and "bridge."
5. To whom forfeitures under this law belong.

2 R. C. p. 237,
§ 11; p. 239, § 16.
1831-2, p. 91, § 7.
1834-5, p. 66, 67,
§ 20, 23.

§ 1. Any person who shall kill a tree, and leave it standing, within the distance of fifty feet from the road, or shall knowingly and wilfully, without lawful authority, break down, destroy, or injure any bridge, bench, or log placed across a stream, for the accommodation, or any sign-board, mile-stone, or post for the direction, of travellers, or obstruct any road, or any ditch made for the purpose of draining any such road, shall be punished by fine, at the discretion of a jury.

§ 2. Any driver of a vehicle, meeting any other vehicle on a road or bridge, shall seasonably drive to the right hand, so that each may pass the other without interference. And when a vehicle is overtaken by any other vehicle, the driver of the former shall bear to the right, and the driver of the latter shall bear to the left, until the latter shall have passed. Any driver failing so to do, shall forfeit two dollars. 2 R. C., p. 121, § 26, 27.

§ 3. Any person who shall drive or ride over a bridge faster than a walk, shall forfeit five dollars. 1834-5, p. 68, ch. 77, § 26.

§ 4. If any horse-race be run on any road, bridge, or landing, the rider of any horse in such race, the owner, if he assent thereto, and every person who shall bet on the race, shall pay a fine not exceeding ten dollars. 2 R. C. p. 237, § 13; p. 239, § 16; p. 320, § 5. 1834-5, p. 67, § 22.

§ 5. In this chapter the construction of the word "road," shall be, that it embraces any turnpike, state road, or county road, or the *Cumberland* road; of the word "bridge," that it embraces any bridge of the state, or a county, or any toll bridge; and of the word "landing," that it means a county landing.

§ 6. Any fine or forfeiture incurred under the first or third section of this chapter, shall, in the case of a county road, bridge, or landing, be to the county; and, in the case of a turnpike or bridge owned by a company or person, shall be to such company or person; and, in the case of the *Cumberland* road, or any state work, shall be to the board of public works.

CHAPTER XCVIII.

OF PATROLS.

SEC.

1. } Patrols, how constituted.
2. }
3. } Their duties.
4. }

SEC.

5. Penalty on patrol for failure of duty.
6. Compensation of members of.
7. Justices may order out patrols.

§ 1. The county court of each county may, when necessary, appoint, for a term not exceeding three months, one or more patrols, consisting of an officer either commissioned or non-commissioned, who shall be captain of patrol, and so many privates as it may think requisite, to patrol and visit within such bounds as the court may prescribe, as often as it shall require, all negro quarters and other places suspected of having therein unlawful assemblies, or such slaves as may stroll from one plantation to another without permission. 2 R. C. p. 228, ch. 242, § 2. 1821-2, p. 12, ch. 10, § 4. 1832-3, p. 20, ch. 25.

§ 2. Patrols to perform the same duty in any town having a corporation court, may be appointed by such court; which, for that purpose, may from time to time divide the militia of said town into wards or districts, and appoint one or more Id. 1831-2, p. 19, ch. 21, § 1.

officers in each ward, to be denominated captains of patrol. The militia of such towns shall be exempt from patrol duty out of the jurisdiction of the towns.

1831-2, p. 19, ch.
21, § 1.

§ 3. Each captain of patrol and his squad, when on duty in such town, shall visit all parts of his ward or district, and shall patrol once every week, or oftener if required by the court.

2 R. C. p. 188,
§ 3.
1839, p. 24, ch.
31, § 1.

§ 4. Such patrols shall take any persons found in an unlawful assembly, or any slaves found strolling as aforesaid, before the justice nearest the place of capture, to be dealt with according to law; and said patrols, when in search of firearms or other weapons, under warrant from a justice, may force open the doors of free negroes, or of slaves in the absence of their masters, if access be denied.

2 R. C. p. 289,
§ 3.
1831-2, p. 20, § 5.

§ 5. Every captain or private of such patrol, who shall, without sufficient excuse, fail in any duty so required, shall forfeit five dollars. Such forfeiture shall be to the county or town to which such patrol may belong.

2 R. C. p. 288,
§ 1, 3.
1831-2, p. 19, § 1, 7.

§ 6. For every twelve hours service, each captain of a patrol shall be entitled to one dollar, and every other man of the patrol to seventy-five cents, which shall be chargeable on the county or town to which such patrol may belong.

2 R. C. p. 288,
§ 1.

§ 7. Any justice may order out patrols in his county or corporation, and appoint a captain for each patrol so ordered out by him, which may continue until the next term of the county or corporation court.

Title 29.

ENCLOSURES AND ANIMALS.

CHAP. 99. Of enclosures and certain trespasses.

100. Of estrays, and vessels or boats adrift.

101. For the preservation of certain useful animals.

102. For the restraint and destruction of dangerous and noxious animals.

CHAPTER XCIX.

OF ENCLOSURES AND CERTAIN TRESPASSES.

SEC.

1. How high fence must be.
2. } Certain rivers made a lawful fence.
3. }
4. Owners of animals trespassing, liable to damages; when such animals forfeited.
5. If animals of non-residents driven on lands in certain counties; penalty therefor.

SEC.

6. } How such animals may be pro-
7. } ceeded against and sold.
8. How owner may redeem them.
9. How purchaser residing in this state may recover them.
10. Penalty for taking another's boat or vessel.

Of lawful fences; and trespasses on lands protected by them.

§ 1. Every fence five feet high, which if the fence be on a mound, shall include the mound to the bottom of the ditch, shall be deemed a lawful fence as to any of the stock named in the fourth section of this chapter, which could not creep through the same. 2 R. C. p. 306, ch. 249, § 1.

§ 2. Each of the following rivers and streams shall be deemed a lawful fence, between the points hereinafter specified, as to the proprietors and occupants of the lands on such rivers and streams, that is to say the *James* river, from its mouth to the western boundary of the counties of *Albemarle* and *Buckingham*; the *Appomattox*, from its mouth to the upper boundary of the tract of land called *Mitchell's*, and from the falls to *Farmville*; *Ward's* creek from its mouth to the upper boundary line of *Carter Edloe*, and all other tributary streams of *James* river from their mouths as high as vessels drawing four feet water can navigate; *Willis'* river, in the county of *Cumberland*, from its mouth to the forks; *Licking Hole* creek, in the county of *Goochland*, from its mouth to the forks; the *Rivanna* river from its mouth to *William H. Meriwether's* mill on the south forth and to *Cudjoe's* rock on the north fork; the *Potomac* river, in the county of *Berkeley*, from dam number five of the *Chesapeake* and *Ohio* canal to the upper line of the lands of *Edward Colston*; the *Shenandoah* river from *William Berry's* mill in *Clarke* county, to the upper end of *Charles L. Churchill's* land in *Warren* county; the *Rappahannock* river, from its mouth to the *Point of Fork*, and between *Wheatley's* mill dam and *Beverley's* ford; the *North Anna* and *Pamunkey* rivers, from *Oxford* on the *North Anna*, to the mouth of the *Pamunkey*, and the *North Anna* from *Dabney's* mills in the county of *Louisa*, to the fork above *Jordan's* mills; the *Roanoke* from the *North Carolina* line to the junction of the *Dan* and *Staunton* rivers; and the *Dan* river thence to the mouth of *County line creek*, and the *Staunton* river, from said junction with the *Dan* to the mouth of *Old Woman's* creek, in the county of *Pittsylvania*; the *Meherrin* river, from *Crichton's* mill in *Lunenburg* to the line of *Greeneville*; *Cub* creek, from its mouth to *Harvey's* bridge across said creek; and the *Kanawha* river, from the falls thereof to the head of *Long Shoal*. 1833-4, p. 186.
1834-5, p. 52, ch. 72; p. 54, ch. 74, § 1; p. 73, § 1; p. 55, ch. 74, § 3.
1835-6, p. 52, ch. 75, 76.
1836-7, p. 79, ch. 85; p. 89, ch. 86.
1838, p. 85, ch. 111.
1839, p. 115, ch. 157, 8, 9; p. 116, ch. 160.
1840-41, p. 120, ch. 115.
1841-2, p. 86, ch. 138.
1842-3, p. 80, ch. 120.
1843-4, p. 75, 6, ch. 101, 2.
1844-5, p. 99, ch. 114.
1845-6, p. 101, ch. 133.
1846-7, p. 151, ch. 161.

§ 3. The owners and occupants of low grounds on either side of *James* river in the counties of *Buckingham*, *Albemarle*, and *Goochland*, enclosed by lawful fences on the back and hill lands, need not keep up any fence on the boundary lines running across the low grounds to the river, and such boundary lines shall be deemed a lawful fence, except where public roads cross the river, or run parallel with its banks. 1834-5, p. 54, ch. 73.

§ 4. If any horses, cattle, hogs, sheep or goats, shall enter into any grounds enclosed by a lawful fence, the owner or manager of any such animal shall be liable to the owner of such grounds for any damages; and for every succeeding 2 R. C. p. 306-7, § 1, 3.

trespass by such animal, the owner thereof shall be liable for double damages. And after having given at least five days notice to the owner or manager of said animal, of the fact of two previous trespasses, the owner or occupier of such grounds shall be entitled to such animal if it be found again trespassing on said grounds.

Trespasses by non-residents in certain counties.

1835-6, p. 50, ch.
71, § 1, 2.
1836-7, p. 49, ch.
72, § 1, 2.
1838, p. 85, ch.
110, § 1.

§ 5. If any person not a citizen of this state shall drive, or cause or permit to be driven, any horses, hogs, sheep or cattle of his, or in his care, on the lands of any citizen in either of the counties of *Preston, Monongalia, Grayson, Lee, Scott, Mason, or Jackson*, without the permission of the owner of said land, he shall pay to such owner his damages, not exceeding fifty cents for each horse and head of cattle, and twenty cents for each sheep and hog, for every day they shall be on such land.

Id. § 3.

§ 6. If any such animals be found running at large on any land mentioned in the preceding section, the owner of such land or his agent may furnish in writing, verified by affidavit, a statement of the number of each kind of such animals, their natural and artificial marks, and the number of days they have so trespassed, to any constable or sheriff of the county. Thereupon such officer shall distrain said animals, and return said statement, with his proceedings thereon, to the next term of the court of his county.

Id.
1835-6, p. 51, § 4.
1836-7, p. 50, § 3,
4.

§ 7. On such return said court shall fix the amount to be paid to the owner of the land under the fifth section, and order the sheriff or any constable of said county to sell said animals, who, out of the nett proceeds, shall pay to the owner of such land the amount so fixed, and the residue into court, the clerk whereof shall retain the same for the use of the original owner of the animals sold.

d. § 4.

§ 8. If before the sale of such animals the owner thereof or his agent shall pay to such officer the amount of damages fixed by the court, with the legal costs of the proceedings, the said officer shall restore the property, and pay over said damages to the owner of the land.

Id. § 6.

§ 9. Where any such animals are distrained under the seventh section, if any person residing in this state, claiming to be the owner of them, shall make oath that they are *bona fide* his property, and that he did not acquire the title to them for the purpose of defeating this or any other law, he may, on the certificate of a justice that he has taken such oath, demand such animals, and the officer who distrained the same shall be bound to surrender them to him. But this section shall not affect the right of any party injured to sue for damages.

Penalty for taking another's boat or vessel.

§ 10. If any person, without permission of the owner, but ^{2 R. C. p. 308, § 5.} not feloniously, shall take away any boat or other vessel, he shall forfeit to the owner thereof ten dollars.

CHAPTER C.

OF ESTRAYS AND VESSELS OR BOATS FOUND ADRIFT.

SEC.		SEC.	
1.	Estray or boat adrift taken up, to be valued and valuation returned to clerk of court.	4.	Owner of the property may recover the valuation, (except fees, &c.)
2.			
3.	After publication, if owner do not appear, property to belong to taker up or owner of land.	5.	Owner of land or taker up not liable if animal or boat be lost.

§ 1. Any person may take up an estray found on his land, ^{1 R. C. p. 445, ch. 112, § 1, 4.} or a boat or vessel adrift. He shall immediately inform a justice of his county or corporation thereof, who shall issue his warrant to three freeholders, requiring them under oath to view and appraise such estray or boat or vessel, and certify the result, with a description of the kind, marks, brand, stature, colour and age of the animal, or kind, burthen and build of the boat or vessel.

§ 2. The said freeholders shall return their certificate, with ^{1d. § 1, 2.} the warrant, to the clerk of the court of said county or corporation, who shall record the same in a book kept for that purpose, and post a copy thereof at the door of his courthouse on the first day of two terms of said court next after receiving the certificate.

§ 3. If the owner of such property shall not then have ^{1d. § 3.} appeared, and the valuation thereof be under five dollars, or if such valuation is as much as five dollars, and the owner shall not have appeared after the said certificate has been published as aforesaid, and also three times in some newspaper published nearest to the place where such property was taken up, it shall belong in either case to the owner of the land on which it was so taken if an estray, or to the person taking it up in the case of a boat or vessel.

§ 4. The former owner may, at any time after, recover the ^{1d.} valuation money, except the amount of the clerk's and printer's fees, and such compensation for keeping the property as shall be certified, under oath, by any two freeholders in the county or corporation where the property was valued, to be reasonable.

§ 5. If such estray die, or any such property be lost to the ^{1d. § 5.} said owner of the land or person taking it up, without his fault, he shall not be liable for the same or its valuation.

Fish.

§ 4. If any person shall, in any year, after the first day of June, and before the first day of September, haul a seine below the mouth of any river in this state, or in the waters of the county of *Northampton*, or set a weir or seine in the waters of the county of *Accomack*, after the fifteenth day of May, and before the fifteenth day of September, he shall forfeit fifty dollars, but this section shall not apply to a person hauling a seine in the jurisdiction of *Elizabeth City* county between *Old Point Comfort* and *Back* river at any time from the fifteenth day of August until the fifteenth day of June in any year.

2 R. C. p. 313, ch. 254.
1836-7, p. 53, ch. 78.
1838, p. 87, ch. 117.
1839, p. 49, ch. 79.
1840-41, p. 89, ch. 79, § 5.
1848-9, p. 74, ch. 120.

§ 5. If any person shall fix in the river *Potomac*, or any of its branches, below the head of tide, any gill-net, seine, or other obstruction, so as to injure the fisheries on said waters, by preventing the passage of fish, he shall forfeit twenty dollars, and be deemed guilty of a nuisance. The judgment for the forfeiture shall require the nuisance to be abated. If the forfeiture be not forthwith paid, the offender shall be committed to jail for thirty days, unless it be sooner paid.

1831-2, p. 70, ch. 80, § 1.

§ 6. If any person shall fish in the *Potomac* river or its tributaries, in March, April, May, or June, with nets or seines not laid out from, hauled to, and landed upon the shores thereof, he shall be fined not less than fifty, nor more than five hundred dollars.

1842-3, p. 61, ch. 90.

§ 7. If any person shall, during the fishing season, anchor or place a vessel, boat, or craft, or other obstruction, within the limits of any fishery, so as to interrupt or hinder any person in this state in the exercise of his rights of fishery, and shall not immediately remove such obstruction when required, he shall be fined, for each hour such obstruction shall be continued, not less than ten nor more than one hundred dollars, one-half of which shall be to the informer; but if such obstruction be unavoidably caused by stress of weather, or other absolute necessity, and the same be removed as soon as it can be safely done, such fine shall not be incurred.

1834-5, p. 53, ch. 71.
1842-3, p. 61, ch. 90, § 2.

§ 8. If any person shall haul, float, or drift in any waters of this state, any seine or net, with a rope or line fixed to the bottom, so constructed as to keep such seine or net in an erect position, and obstruct the passage of fish, he shall forfeit one hundred dollars. But this section shall not prevent the use of such seines and nets as had been used in the waters of this state, by citizens thereof, prior to the thirteenth of February in the year eighteen hundred and forty-four, nor shall it apply to any of the waters within either of the counties of *Accomack*, *Northampton*, *Norfolk*, or *Essex*, nor to any of the waters of the *Rappahannock*, or its tributaries.

1843-4, p. 62, ch. 82.
1844-5, p. 63, ch. 76.
1845-6, p. 69, ch. 100.

§ 9. If any person, not a resident of this state, haul or fish with any seine in any of the waters thereof, or fish in the waters of the *Rappahannock* river, in any other way than by a line held in the hand, or attached to a pole or rod held in the

1840-41 p. 88, ch. 79, § 6.
1846-7, p. 71, ch. 85, § 1.

hand, he shall forfeit not less than ten, nor more than one hundred dollars, one half whereof shall be to the informer.

1834-5, p. 53, ch.
71.
1 R. C. p. 54, § 7,
8, 10.
Ante, p. 54, ch.
1, § 7.

§ 10. If any person shall violate the fourth, fifth, sixth, seventh, eighth, or ninth sections in or on the *Potomac* river, the process and jurisdiction to enforce the penalties or recover damages therefor shall be according to the compact between *Virginia* and *Maryland*, so far as therein provided for, and so far as not so provided for, according to the other laws of this state.

1848-9, p. 74, ch.
121.

§ 11. If any person who is not a resident of this state shall take or catch fish by nets or seines from the *Ohio* river, or any of its tributaries, within the jurisdiction of this state, he shall forfeit not less than one hundred and fifty dollars, one half whereof shall be to the informer.

*Oysters and terrapins.**

1846-7, p. 71, ch.
86, § 1 2.

§ 12. If any person other than a citizen of this state shall take oysters or terrapins in the waters thereof, or in the rivers *Pocomoke* and *Potomac*, he shall forfeit two hundred dollars. But this section shall not extend to a citizen of *Maryland* taking oysters or terrapins in the said mentioned rivers.

1846-7, p. 71, ch.
86, § 6.

§ 13. If any person shall take oysters with any other instrument than common oyster tongs, with a bar or head not exceeding twenty-three inches in length, he shall forfeit one hundred dollars.

Id. § 9, 10, 11, 12.

§ 14. If any person shall export oysters, not pickled or planted, from the waters of this state, or shall take, catch, buy, sell, receive or deliver the same on board of a vessel for the purpose of exportation, after the first day of May and before the first day of September, in any year, he shall forfeit two hundred dollars for each offence.

§ 15. If any person, after the first day of May and before the first day of October, in any year, shall catch, take, buy or sell oysters from their natural beds or shoals, in quantities greater than fifty bushels in any one day, he shall forfeit twenty dollars for each offence.

1846-7, p. 74, ch.
86, § 1, 2.

§ 16. If any person, after the first day of May and before the fifteenth day of October, in any year, shall take terrapins, or take or disturb terrapin eggs, he shall forfeit one hundred dollars.

p. 5.

§ 17. If any person shall take oysters for the purpose of converting into lime, he shall forfeit five hundred dollars. But this section shall not prevent the citizens of this state from

* The laws on the subject of oysters have heretofore been very numerous. See 2 R. C. p. 314, ch. 255; 1819-20, p. 19, ch. 23; 1820-21, p. 114, ch. 45; 1831-2, p. 260, ch. 192; 1832-3, p. 53, ch. 84,—p. 96, ch. 77,—p. 148, ch. 184; 1833-4, p. 96, ch. 77; 1835-6, p. 55, ch. 116; 1839, p. 48, ch. 78; 1839-40, p. 108, ch. 34; 1840-41, p. 88, ch. 79; 1841-2, p. 65, 66, ch. 108, 109, 111; 1842-3, p. 63, ch. 92, 93; 1843-4, p. 62, 63, ch. 82, 84; 1844-5, p. 63, 64, 65, ch. 76, 77, 78, 80; 1845-6, p. 69, 70, 71, ch. 100, 101, 102, 104; 1846-7, p. 71, 75, ch. 86, 87; 1847-8, p. 88, ch. 117; 1848-9, p. 75, 77, 78, ch. 122, 123, 124, 125.

taking oysters for such purpose from the *Broadwater*, on the seaside.

Clams.

§ 18. If any person who is not an actual resident of this state, shall catch clams in the waters of *York* river or its tributaries, or on *Egg Island Flats*, he shall forfeit twenty dollars, and give a recognizance, in a penalty not exceeding fifty dollars, that he will not catch clams contrary to law for one year, and he shall be committed to jail for fifteen days, unless the judgment and recognizance be sooner paid and given. ^{1840-41, p. 90, ch. 81.}

Wild fowl.

§ 19. If any person who is not an actual resident of this state shall shoot at, catch, or kill any wild fowl in any waters, or on any marshes, islands, or beaches, within the jurisdiction of the state, below the head of tide-water, he shall forfeit one hundred dollars, one half whereof shall be to the informer. ^{1840-41, p. 88, ch. 79. 1841-2, p. 65, ch. 109.}

§ 20. If any person, except from the land, shall shoot at or kill wild fowl during the night, within this state; or if any person shall, from a skiff, or with the aid thereof, within the jurisdiction of the counties of *Accomack*, *Fairfax* or *Prince William*, whether in the night or day time, shoot at or kill wild fowl, he may be convicted thereof before a justice; and, on conviction, shall surrender his gun and any such skiff, and the same shall be forfeited to the commonwealth. If he fail to surrender them, he shall be committed to jail for thirty days, unless the surrender be sooner made. And if any person offending against this section be not an actual resident of this state, he shall moreover forfeit two hundred dollars. ^{1831-2, p. 70, ch. 80, § 2. 1839, p. 50, ch. 80. 1839-40, p. 107, ch. 133.}

§ 21. The preceding section shall not apply to any person shooting or using a skiff while hunting wild fowl in a marsh owned by him, nor to any person residing on or near the *Potomac*, in the county of *Westmoreland*, or any county below the same on the *Potomac*, shooting wild fowl not for sale, but for his own use. ^{Id. 1832-3, p. 54, ch. 85, § 1.}

§ 22. If any person shall, at any time, either in the night or day time, shoot at wild fowl in any county bordering on the *Potomac*, or on the waters of the same, with any gun which cannot be conveniently discharged from the shoulder at arm's length without a rest, a justice of any such county shall require such gun to be surrendered, and shall order it to be destroyed. If the offender fail to surrender the same, he shall be committed to jail, to remain until discharged by the court of such county. ^{Id. § 2.}

General provisions.

§ 23. No person shall be deemed a non-resident of this state, within the meaning of any section of this chapter, who ^{1841-2, p. 65, ch. 108.}

is *bona fide* the owner or tenant of any fishery in this state, or of any tract of land on any tide water course therein. Nor shall any such section prohibit such owner or tenant from employing non-resident white labourers in seine-hauling for him.

1845-6, p. 71, ch.
104, § 1, et alia.
Ante, p. 227, ch.
43.

§ 24. Any proceeding under any section of this chapter may be according to the forty-third chapter, or in any county or corporation adjacent to the waters in which the offence was committed. And where the penalty is incurred by reason of the defendant being a non-resident, the burden of proof as to his residence shall be upon him.

1820-21, p. 38,
ch. 40.
1840-41, p. 88, ch.
79, § 6.
1842-3, p. 61, ch.
90.
1843-4, p. 62, ch.
82.
1846-7, p. 71, ch.
86, § 2.

§ 25. Where a proceeding is instituted for any violation of any section of this chapter, on affidavit of such violation, a justice may issue his warrant for the apprehension of the offender, and it shall not be necessary therein to name the offender or the vessel in his employment.

§ 26. The justice, before whom he may be brought, may, on hearing proof, either discharge the accused, or require him to enter into a recognizance, to appear at the next term of the circuit court, or at the next quarterly term of the county or corporation court, as the justice may determine, to answer for the said offence, and to satisfy the judgment which may be rendered against him therefor.

1841-2, p. 65, ch.
109.
1846-7, p. 72, § 2;
p. 75, ch. 87, § 2,
et alia.

§ 27. Under the warrant for the apprehension of any offender, in pursuance of either of the two preceding sections, the officer executing such warrant, shall take possession of any vessel, boat or skiff, (with their tackle and appurtenances,) which the defendant may belong to or be using or have used in the commission of the offence, for which he is prosecuted, and hold the same until the recognizance required be given, or until the defendant be acquitted. But if judgment be given against the defendant, it shall be part of the judgment of the court, that, if the penalty and costs be not forthwith paid, all the property so seized be sold and the proceeds accounted for as if it were the property of the defendant, seized under an execution for the satisfaction of the judgment. For the seizure and safe keeping of any vessel, with the equipments, under the provisions of this chapter, the officer effecting the same shall receive a fee of twenty dollars, to be taxed in the costs.

§ 28. The informer, if there be one, shall be entitled to a moiety of any fine imposed by this chapter.

CHAPTER CII.

FOR THE RESTRAINT AND DESTRUCTION OF DANGEROUS AND NOXIOUS ANIMALS.

SEC.		SEC.	
1. }	Diseased or unaltered horses not	7. }	Fees of officers for executing war-
2. }	to go at large.		rant.
3. }	Distempered cattle, how restrained.	8. }	Courts to fix rewards for killing
4. }		9. }	wolves, &c.; how they are paid.
5. }	Mad dogs or dogs that worry sheep,		
6. }	to be killed.		

§ 1. Any justice, on proof that a horse afflicted with the glanders or farcy is permitted by the owner or keeper thereof wilfully or negligently to go out of his enclosed grounds, shall order such horse to be killed and to be buried (with the hide on) four feet deep, having first given to the owner of such horse, or to his agent, if any there be resident in the county or corporation, reasonable notice of the time and place when and where such order is proposed to be made. And such owner or keeper shall forfeit twenty dollars. 1839, p. 47, ch. 77.

§ 2. If any person shall wilfully or negligently permit any unaltered horse, of the age of two years, to go at large out of the enclosed grounds of the owner or keeper, after having been admonished to confine such horse, he shall forfeit twenty dollars, and for the second offence double that sum, one half of which forfeitures the informer shall have, and if after a second conviction, the said horse be found so going at large, he shall be the property of any person who will take him up. 2 R. C. p. 316, ch. 257.

§ 3. Every person shall so restrain his distempered cattle, or such as are under his care, that they may not go at large off the land to which they belong, and no person shall drive any distempered cattle into or through the state, or from one part thereof to another, unless it be to remove them from one piece of ground to another of the same owner; and when any such cattle shall die, the owner thereof, or person having them in charge, shall cause them to be buried (with their hides on) four feet deep. If any person shall offend against this section in either respect, he shall forfeit four dollars for every head of such cattle. 2 R. C. p. 308, § 6.

§ 4. Any justice, upon proof before him that any cattle are going at large, or are driven in or through his county or corporation, in violation of the preceding section, may direct the owner to impound them; and if he fail to do so, or suffer them to escape from the pound before obtaining from a justice a certificate that they may be removed with safety, the justice giving such direction, or some other justice, shall order them to be killed and buried four feet deep with their hides on, but so cut that none may be tempted to take them up. 1d.

§ 5. Any justice, on proof that any dog is mad, or has been bitten by a mad dog, or has killed or worried any sheep, shall order such dog to be killed. 2 R. C. p. 317, ch. 258. 1828-9, p. 26, ch. 23.

§ 6. If the owner of any dog so ordered to be killed shall conceal him, or cause him to be concealed, to prevent the order from being executed, he shall forfeit four dollars for every day such dog shall be so concealed. 1d.

§ 7. The constable or any other person who may execute the order of any justice as aforesaid to kill and bury any horse, cattle or dog, shall have the following fees; in the case of a horse four dollars, of cattle one dollar for each head, and for each dog one dollar, to be paid by the owner in each case if he be known and able to pay, and if not, by the county or corporation, and if any officer to whom any such order is 2 R. C. p. 308, § 6. 1839, p. 47, ch. 77, § 2.

directed shall fail to execute it, he shall forfeit in each case an amount equal to said fees.

2 R. C. p. 102, ch.
44, cum multis
aliis.

§ 8. The court of any county may, when a majority of the acting justices thereof is present, or when all the acting justices have been summoned, under a previous order of the court, to act on the subject, allow or discontinue rewards for killing in such county wolves, foxes, wild cats, crows or blackbirds, fix or alter the amount of such rewards, make regulations for establishing the right thereto, and for guarding against frauds upon the county, and alter or rescind such regulations.

Id.

§ 9. Every order fixing the amount of any such reward shall be in force for one year. And every such reward to which the right may be established, shall be chargeable on the county.

Title 30.

SLAVES AND FREE NEGROES.*

CHAP. 103. General provisions as to slaves.

- 104. Of dealing with slaves, and suffering them to go at large.
- 105. Of runaway slaves.
- 106. Of suits for freedom.
- 107. Of free negroes.

CHAPTER CIII.

GENERAL PROVISIONS AS TO SLAVES.

SEC.		SEC.	
1. }	Who are or may be slaves in this	8.	Slaves held for life to be regis-
2. }	state.		tered.
3.	Definition of mulatto.	9. }	How slaves and their increase
4.	What slaves a free negro may own.	10. }	emancipated.
5.	Slaves personal estate.	11.	Such slaves liable for debts.
6.	Owner compelled to provide for	12.	Persons setting slaves free to sup-
	chargeable slaves.		port such as are chargeable.
7.	Tenant for life not to carry slaves		
	out of the state.		

* It is said by *Beverley*, that in August 1620 "a Dutch man of war landed 20 negroes for sale, which were the first of that kind that were carried into the country."

As to *Indians*, it was provided by the acts of 1654-5, 1655-6, 1657-8, and 1661-2, that their children, by leave of the parents, might be taken as servants, for such term as might be agreed on by the parent and master. *Hen. Stat. vol. 1, p. 410.* They were not to be used as slaves, but the best done to bring them up in Christianity, civility, and the knowledge of necessary trades. *Id. 396.* Those who took them were not to transfer them to any other, and they were to be free at the age of 25 years. *Id. p. 455, 6.* An Indian was not to be bought from the English, *id. p. 481, 2,* nor an Englishman to sell an Indian, for a longer time than English of like ages were to serve. *Vol. 2, p. 143.* These were the general rules. Yet, in one instance, on complaint of damages to an individual by the Indians, it was ordered, if the award of commissioners was not complied with,

§ 1. None shall be slaves in this state except those who are ^{1 R. C. p. 421, ch. 111, § 1.} so when this chapter takes effect, such free negroes as may be sold as slaves pursuant to law, such slaves as may be law- ^{2 Munf. 379.} fully brought into this state, and the future descendants of female slaves.

§ 2. Slaves born within the limits of the *United States* may ^{1 R. C. p. 421, ch. 111, § 2.} be brought into this state and held therein, if resident in those

that so many of the Indians should be apprehended and sold, as would satisfy the award. *Id.* p. 15, 16. And sales of Indians, it may be inferred, were sometimes made by their kings. *Id.* p. 155.

In 1662, it was provided that all children born in this country shall be held bond or free, only according to the condition of the mother. *Id.* p. 170.

An act of October 1670, after reciting that some dispute had arisen, whether Indians taken in war, and by the nation taking them sold to the English, were servants for life or years, enacts, that all servants, not being Christians, imported into this colony by shipping, shall be slaves for their lives; but what shall come by land shall serve, if boys or girls, until 30 years of age, if men or women, 12 years, and no longer. *Id.* p. 283. In 1676, an act for carrying on war against the Indians (with a force of which *Nathaniel Bacon, junior*, was commander,) provides, that all Indians taken in war should be slaves during life. *Id.* 346. This was again sanctioned in 1676-7: *id.* p. 404; and in 1679, *id.* p. 440. And in 1682 an act passed, repealing the act of October 1670, and declaring that all servants, (except Turks and Moors in amity,) which should thereafter be brought into this country, either by sea or land, whether negroes, Moors, mulattoes or Indians, who and whose parentage and native country are not Christian, at the time of the first purchase of such servant by some Christian, (although afterwards, and before their bringing into this country, they be converted to the christian faith,) and all Indians which should thereafter be sold by our neighbouring Indians, or any other trafficking with us, as and for slaves, should be adjudged as slaves. *Id.* p. 491. In April 1691, there was an act declaring that there should be "a free and open trade, for all persons, at all times and at all places, with all Indians whatsoever." *Hen. Stat.* vol. 3, p. 69. This act, which was re-enacted at the revisal of 1705, (*id.* p. 468, ch. 52, § 12,) has received a judicial construction favourable to the descendants of Indians. *Gen. Ct.* in 1777; 1 *Wash.* 23. It was *held*, that after this act no American Indian could be reduced into slavery. 1 *Wash.* 233; 1 *H. & M.* 134; 2 *H. & M.* 149; 4 *Munf.* 209; 4 *Rand.* 611; 2 *Leigh* 681, 684, 5.

Negroes might, however, still be imported as slaves, subject to an import duty. *Hen. Stat.* vol. 3, p. 193. The provision in the revised act of 1705, in ch. 49, § 4, 6, is, that "all servants imported and brought into this country, by sea or land, who were not Christians in their native country, (except Turks and Moors in amity with her majesty, and others that can make due proof of their being free in *England*, or any other Christian country, before they were shipped in order to transportation hither,) shall be accounted and be slaves, and as such be here bought and sold, notwithstanding a conversion to christianity afterwards;" and "that a slave's being in *England* shall not be sufficient to discharge him of his slavery, without other proof of his being manumitted there." *Id.* p. 447, 8. These provisions in the act of 1705 were substantially repeated in the act of 1748: *id.* vol. 5, p. 547, 8, and in the act of 1753. *Id.* p. 356, 7.

The act of 1778 (brought forward by Mr. *Jefferson*) prohibited the importation of slaves into this state by sea or land, with certain exceptions. *Id.* vol. 9, p. 471, 2. Its policy was continued by the revised act of 1785, which provided that "no persons shall henceforth be slaves within this commonwealth, except such as were so on the first day of this present session of assembly, and the descendants of the females of them;" and declared that "slaves which shall hereafter be brought into this commonwealth, and kept therein one whole year together, or so long at different times as shall amount to one year, shall be free." The act contained certain exceptions. *Id.* vol. 12, p. 182, 3. As revised in 1792 it is in vol. 1st of *Old Rev. Code*, ch. 103, § 2, 3, 4, *Pleasants'* edi. p. 186, 7. The exceptions in the act were enlarged by the act of 1796-7, p. 12, ch. 11; then its object was sought to be enforced by more stringent provisions in the act of 1805-6, p. 35, ch. 63; which provisions were modified by the acts of 1810-11, p. 15, ch. 14; 1812-13, ch. 18, and 1816-17, p. 27, ch. 21.

Under the acts of 1778, 1785, and 1792, cases arose which are reported in 2 *Munf.* 393; 5 *Munf.* 542; 6 *Munf.* 12; *id.* 159; *Gilm.* 231; 4 *Rand.* 67; *id.* 135; *id.* 659; 6 *Rand.* 612; and 5 *Leigh* 615. An essential change in the policy of the state was made at the revisal of 1819, by the act in 1 R. C. p. 421, ch. 111, § 1, 2, 3, revised in § 1, 2 of this chapter, and in ch. 198, § 40.

limits at the time of removal, and not theretofore convicted of and transported for crime.

1 R. C. p. 423,
§ 11.

4 Grat. 541.

§ 3. Every person who has one-fourth part or more of negro blood shall be deemed a mulatto, and the word "negro" in any other section of this, or in any future statute, shall be construed to mean mulatto as well as negro.

1831-2, p. 20, ch.
22, § 3.

§ 4. No free negro shall be capable of acquiring (except by descent) any slave other than the husband, wife, parent or descendant of such free negro.

1 R. C. p. 431,
§ 47.

§ 5. Slaves shall be deemed personal estate.

1 R. C. p. 434,
§ 55.
1823-4, p. 37, ch.
34, § 3.

§ 6. Any person who shall permit an insane, aged or infirm slave owned by him or under his controul, to go at large without adequate provision for his support, shall be punished by fine not exceeding fifty dollars, and the overseers of the poor of the county or corporation, in which such slave may be found, shall provide for his maintenance, and may charge such person quarterly or annually with a sufficient sum therefor, and recover it from time to time, by motion in the court of such county or corporation. If any person shall, by sale, gift or otherwise, dispose of any insane, aged or infirm slave, which is, or is likely to become, chargeable, such person, or the donor or vendor, (at the election of the said overseers,) may be proceeded against as the owner of the slave, under this section.

1 R. C. p. 431,
§ 48, 9.

§ 7. If any tenant for life of a slave, shall remove him or permit his removal out of the state, without the consent of those in reversion or remainder, he shall forfeit such life estate and the full value of such slave to the person in reversion or remainder. And should such tenant for life be one of several remaindermen or reversioners in such slave, the others may recover, either jointly or severally, their shares in remainder or reversion in such slave from any person claiming from or under such tenant for life.

1 R. C. p. 439,
§ 70.

§ 8. Every tenant, for his own or another's life, of a slave, or the guardian or husband of such tenant, shall, within one year after becoming possessed of such slave, or after the birth of any increase thereof, furnish the clerk of the county or corporation, in which such tenant resides, a statement in writing of the name, sex and age of such slave or increase, as the case may be, and the clerk shall forthwith register the same in a separate book, kept for that purpose. Any tenant so entitled, or the guardian or husband of such tenant, failing to comply with this section, shall forfeit to the person, entitled in reversion or remainder, fifty dollars for every slave as to which such failure shall have occurred.

1 R. C. p. 433,
§ 53.

See post, ch. 121,
§ 2, et seq.

§ 9. Any person may emancipate any of his slaves by last will in writing, or by deed, recorded in the court of his county or corporation.

2 Rand 228.
6 Rand. 652.
9 Leigh 188.
10 Leigh 277.
11 Leigh 616.

§ 10. The increase of any female so emancipated by deed or will hereafter made, born between the death of the testator, or the record of the deed, and the time when her right to

the enjoyment of her freedom arrives, shall also be free at that time, unless the deed or will otherwise provides. ^{1 Rob. 53.}
^{2 Rob. 597.}

§ 11. All slaves emancipated as aforesaid, shall be liable for any debt contracted, by the person emancipating them, before such emancipation is made. ^{1 R. C. p. 434,}
^{§ 54.}

§ 12. If any person emancipate a slave, who is likely to become chargeable to the county or corporation, without making adequate provision for his support, and such slave become so chargeable, the overseers of the poor shall provide for his maintenance, and charge such person, or his estate, quarterly or annually, with a sufficient sum therefor, and may recover it, from time to time, by motion, in the court of such county or corporation.* ^{1 R. C. p. 434,}
^{§ 55.}

CHAPTER CIV.

OF DEALING WITH SLAVES AND SUFFERING THEM TO GO AT LARGE.

SEC.

1. } Selling spirits to or dealing with
2. } slaves prohibited.
3. Licenses of tavern keepers, &c. revoked therefor.
4. Offender to give security for good behaviour.

SEC.

5. } Slave not allowed to trade in spirits,
6. } or go at large, &c. How slave
7. } and his owner proceeded against.
8. Harboursing a slave punished.

§ 1. If any person sell wine, ardent spirits, or any mixture thereof, or any other intoxicating liquor, to a slave without the written consent of his master, he shall forfeit to the master four times the value of the thing sold, and also pay a fine of twenty dollars. ^{1 R. C. p. 426, ch.}
^{111. § 19.}
^{1819-20, p. 23, ch.}
^{26, § 2.}
^{1831-2, p. 24, ch.}
^{24, § 2, 4.}

* There seem to have been instances of emancipation before 1668; for laws as to the condition of free negroes were made in that year, and in 1670. Hen. Stat. vol. 2, p. 267, ch. 7; p. 280, ch. 5. Under the act of 1691, no person was to set free a slave, without paying for his transportation out of the country within six months after setting him free. Id. vol. 3, p. 87, ch. 16. The act of 1723 prohibited a slave being set free, except for meritorious services, to be adjudged by the governor and council, and a license thereupon obtained. Id. vol. 4, p. 132, ch. 4, § 17. This law was re-enacted in 1748. Id. vol. 6, p. 112, ch. 38, § 26. It was in force when the wills and deed were made under which freedom was claimed in *Pleasants vs. Pleasants*, 2 Call. 319, and *Moses vs. Denegree*, 6 Rand. 561.

In 1782 an act passed to authorize the manumission of slaves. 11 Hen. Stat. p. 39. It was followed by that of 1783, emancipating those slaves who had served as soldiers in the war. Id. 308. The right to emancipate has continued ever since. See 1 R. C. p. 433, 4, ch. 111, § 53; and the validity and effect of instruments of emancipation have been passed upon in many cases. See 6 Munf. 191; 2 Leigh 762; 7 Leigh 689; 6 Munf. 229; 1 Rand. 15; 4 Rand. 597; 6 Rand. 173; 1 Leigh 72; 2 Leigh 189; id. 300; 3 Leigh 8; id. 140; 4 Leigh 163; id. 289; id. 252; 9 Leigh 511; 1 Grat. 129; 2 Grat. 36; id. 227. The cases bearing particularly upon the rule established by the 10th section of this chapter, are referred to in the margin of that section.

As to the liability of slaves emancipated, for debts contracted by the person emancipating them, before such emancipation, see 1 Rev. Code of 1792, p. 191, ch. 103, § 37; of 1819, p. 434, § 54; 5 Call. 336; 1 H. and M. 519; 1 Leigh 465; 4 Leigh 252; 9 Leigh 511; and 10 Leigh 467.

1 R. C. p. 426, ch.
111, § 19.
1819-20, p. 23, ch.
26, § 2.
1831-2, p. 24, ch.
24, § 2, 4.

§ 2. If any person buy or receive from, or sell to, a slave, without his master's consent, any other article or commodity whatever, he shall forfeit to the master four times the value of such article or commodity and also pay a fine not exceeding twenty dollars.

1831-2, p. 24, ch.
24, § 4.

§ 3. If the offender against either of the two preceding sections be a licensed ordinary keeper, merchant, hawker or pedlar, in addition to the other penalties prescribed by the said sections, his license shall be revoked.

1 R. C. p. 426,
§ 21.

§ 4. Any offender against the first or second section of this chapter shall moreover give security for his good behaviour for a year; and, on failure, shall be committed to jail till the security be given or till the county or corporation court, (where the conviction was before a justice,) or the court where the conviction was, shall for good cause shewn discharge him.

1831-2, p. 24, ch.
24, § 5.

§ 5. If any master or other person give written permission to a slave to obtain, or furnish him with, any intoxicating liquor, with the intent that he shall sell, barter or trade the same or any part thereof, such master or other person shall forfeit twenty dollars, and give security for his good behaviour for one year.

1 R. C. p. 442, 3,
§ 80, 81, 82.

1 Rob. 675, 6.

§ 6. Any person permitting a slave under his control to go at large, trade as a free man, or hire himself out for the benefit of any person whatever, shall forfeit not less than ten nor more than thirty dollars. And if the person so permitting hold the slave as personal representative, guardian, curator or committee, he shall pay the fine out of his own estate, and not out of that held by him as such fiduciary.

Id.

§ 7. Any person may, and officers shall, with or without warrant, arrest any slave as to whom there is a violation of the preceding section, and carry him before a justice, who, on due proof of the fact, shall commit him to jail, unless his master or some other person give recognizance with good security for his forthcoming to abide the result of the prosecution. The justice shall notify the proceeding to the commonwealth's attorney of the county or corporation court, at or before the next term thereof, when, if it appear to the court that the master has violated the preceding section, the court may impose on him a fine of not less than ten dollars nor more than thirty dollars, or direct an information to be filed against him. If he be adjudged guilty by the court, or be convicted by a jury, and fail to pay forthwith the fine, jail fees and all other costs, the said slave shall be sold therefor in the same manner as a slave taken under execution. Execution may issue as in other cases, if the slave be not forthcoming, or be sold and prove insufficient to pay the fine and costs.

1 R. C. p. 439,
§ 69.

§ 8. Any person harbouring or employing a slave without the consent of his master, shall forfeit to the master not less than one, nor more than five dollars for every day of such harbouring or employment.

CHAPTER CV.

OF RUNAWAY SLAVES.

SEC.

1. } To be carried before a justice; his
2. } certificate and warrant.
3. Court may discharge the negro if not a runaway; fees, &c. how paid in such case.
4. } What rewards and mileage to be
5. } paid for apprehending, and by whom.
6. Rewards, &c. a lien on slave.
7. Delivery of runaway to owner may be ordered by court.
8. Jailor liable to apprehender for reward, &c.

SEC.

9. Duty of jailor to advertise runaway.
10. When court to order him to be sold.
11. } Duty of officer selling him.
12. }
13. Duty of the clerk of the court.
14. How proceeds of sale may be paid to owner.
15. Jailor to furnish runaway clothing, &c.
16. When runaway dies in jail; fees, &c. how paid.

Runaways apprehended.

§ 1. Every slave arrested as a runaway, shall be taken before a justice, and if there be reasonable cause to suspect that such slave is a runaway, the justice shall give a certificate thereof stating therein, as near as may be, if the same be known, the distance of the place of arrest from that from which the slave may be supposed to have fled, and the sum of money demandable therefor by the person making the arrest, including mileage. If the arrest be made without the state, the slave shall be taken before a justice of the county or corporation into which he may be first brought, and such justice shall give the proper certificate.

§ 2. The justice giving the certificate, by his precept endorsed thereon, shall command the person, applying for the same, forthwith to deliver the slave for safe keeping, (together with the said certificate,) to the jailor of his county or corporation, who shall give his receipt therefor, or, if the owner of the slave or his agent be known, the precept may command the delivery to be made to such owner or agent, upon the payment of the sum of money demandable for the arrest and mileage, and, upon default of such payment, to the jailor of the county or corporation in which such default is made.

§ 3. Any person confined in jail, on suspicion of being a runaway slave, may be discharged by the county or corporation court, in which case, or if he die in jail, the prison fees and other lawful charges shall be chargeable upon such person, (if he be a free negro,) upon the owner (if he be a slave,) upon the person making the arrest, or upon the county or corporation, as the court may deem proper.

§ 4. Every person who may arrest a runaway slave, and deliver him to the owner, or his agent, or to some jailor at his jail, with the certificate of a justice, in the manner herein provided, shall be entitled to demand of such owner a reward therefor: that is to say, if such slave be arrested in this state,

2 R. C. p. 284,
§ 1, 6:
1822-3, p. 37, ch.
35, § 2.

2 R. C. p. 285, § 5.

2 R. C. p. 285, § 1,
6, 7, 8.
1822-3, p. 37, ch.
35, § 1, 4.
1840-41, p. 82, ch.
73.
1846-7, p. 77, ch.
88, § 10.
2 H. and M. 5.

and within fifty miles of his residence, a reward of five dollars, or if more than fifty miles, ten dollars; if in any other slaveholding state, and within fifty miles of his residence, ten dollars, or if more than fifty miles, twenty dollars; if in any non-slaveholding state, and within fifty miles of his residence, fifty dollars, or if more than fifty miles, one hundred dollars; if on board a vessel departing or about to depart from any point in this state, a reward of forty dollars. And in every case, the person making the arrest and delivery shall be allowed mileage, at the rate of ten cents a mile, for necessary travel from the place of arrest. The hirer of a slave shall not be liable for the payment of any reward allowed by this section, unless such running away was caused by the bad treatment of the hirer, or otherwise by his act or procurement, and in that event the hirer shall pay to the owner the whole of such reward and expense of apprehending such slave.

2 R. C. p. 287,
§ 13.
1822-3, p. 37, ch.
35, § 3.

§ 5. If any private reward be offered for the arrest of a runaway slave, the person making the arrest may, at his option, demand such reward, or the reward and mileage allowed by law.

d.

§ 6. The reward and mileage allowed or offered, as aforesaid, shall be a lien on the slave from the time of his apprehension till the same be paid, or till he be delivered to the owner, or discharged by the court, and on the proceeds of sale, if sold, as hereinafter provided.

Runaway to be delivered to owner.

2 R. C. p. 287, § 4.

§ 7. The court of the county or corporation in which a runaway slave may be confined, or any justice thereof, may order such slave to be delivered to the owner or his agent, upon payment to the jailor of all lawful charges incident upon his arrest.

2 R. C. p. 287,
§ 13.
1822-3, 37, § 3.
1834-5, p. 45, § 3.

§ 8. The jailor having so delivered such slave, he and his sureties shall be liable to the person making the arrest, for his reward and mileage. The liability shall be only for the reward and mileage prescribed by law, if the jailor had no notice that a larger reward was offered, and the owner or his agent, before the delivery, made oath that no larger reward had been offered by the owner, or any person authorized by him.

2 R. C. p. 285,
§ 1, 3.
1828-9, p. 25, ch.
21, § 3.
1834-5, p. 44, ch.
62, § 1.

§ 9. When a runaway slave is committed to jail, the jailor shall forthwith set up an advertisement, describing the slave and his apparel, at the door of the courthouse of his county or corporation. If no owner claim him within one month, the jailor shall cause a like advertisement to be published for six weeks in some newspaper in the city of *Richmond*, and also (where the jail is not in that city,) in some newspaper circulating near the jail. He shall also endeavour to ascertain the owner's name and residence, and, upon obtaining any information thereof, shall send the supposed owner by mail, postpaid, an unsealed letter, directed to the post office supposed to be nearest to his residence, describing the runaway,

and stating any other facts deemed material. If the jailor omit any of the duties prescribed by this section, his fees for receiving and keeping the slave shall be reduced to such extent as the court of his county or corporation may think proper.

§ 10. If such runaway be not claimed by the owner within four months after the advertisement aforesaid is ended, the county or corporation court, upon the jailor's report, and proof of such advertisement, shall order its officer to sell the slave. The sale shall be made at the same time and place, and after such notice at the courthouse door, as in the case of slaves levied on.

§ 11. The said officer, after deducting from the proceeds a commission of five *per centum*, the jailor's lawful fees, and other charges, and the apprehender's dues (all of which are to be paid by the said officer,) shall pay the residue into the public treasury, at the same time, and under the same penalties for failure as in the case of taxes.

§ 12. If such officer fail to make a report of the sale as prescribed by the forty-ninth chapter, he shall forfeit one hundred dollars to the commonwealth, unless before a proceeding therefor the owner of the slave appear and prove his ownership, in which case the forfeiture shall be to such owner.

§ 13. When a runaway is so ordered to be sold, the clerk of the court shall, as soon as may be, transmit to the first auditor a copy of the order, and also of the officer's report of the sale; for each of which copies the clerk shall have a fee of fifty cents, to be paid from the proceeds of sale. A clerk failing to transmit a copy of the order or report, within twenty days after the former is made or the latter is returned, shall forfeit fifty dollars.

§ 14. The court by whose order the sale was made, may at any time thereafter, order the nett proceeds thereof to be paid to the owner by the officer making the sale, if the money be still in his hands, or out of the treasury, if it be therein.

§ 15. When an imprisoned runaway is not sufficiently clothed, the jailor shall furnish him with proper negro clothing, the cost of which shall be adjusted by the county or corporation court, or two justices.

§ 16. If such slave die in jail, the jailor's fees and other lawful charges shall be paid by the owner; if he be not known or be unable to pay, then out of the treasury, on being allowed and certified by the court.

2 R. C. Id. § 5.
1821-2, p. 23, ch.
22, § 1, 2.
1823-4, p. 39, ch.
36, § 3.
1834-5, p. 44, § 2.

Id.
1822-3, p. 37, ch.
35, § 2.

Id.
See ante, p. 251,
ch. 49, § 28.

1821-2, p. 24, ch.
24, § 2.

2 R. C. p. 285, § 5.

1822-3, p. 34, ch.
30, § 13.

See ante, p. 255,
ch. 50, § 3.

4 Rand. 256.

2 R. C. p. 285, § 2.

CHAPTER CVI.

OF SUITS FOR FREEDOM.

SEC.

1. } Person claiming freedom to file
2. } petition; proceedings thereon.
3. }
4. Court to assign him counsel; no fees to be charged him for process, &c.
5. Duty of counsel and court.

SEC.

6. } Case to have preference; trial, ver-
7. } dict, and judgment.
8. When slaves entitled to profits of their labour.
9. Person aiding a slave in such suit, when liable for damages.

1 R. C. p. 481, ch. 124, § 4.

§ 1. Any person conceiving himself unlawfully detained as a slave, may petition the circuit court, or court of the county or corporation in which he may be detained, for leave to sue for his freedom, or he may complain thereof to a justice.

Id.

5 Munf. 95,
6 Munf. 456.
Gilmer 333.
6 Rand. 159.

§ 2. If the complaint be made to a justice, he shall, by precept in writing, give the complainant in charge to the sheriff or other officer, to be produced before the circuit court, or court of the county or corporation, (as the complainant may elect,) at the next term thereof; and in the mean time to be safely kept, at the expense of the person claiming to be the owner; and shall cause such person to be notified thereof.

Id.

See ante, p. 88,
ch. 13, § 8.

§ 3. If the person claiming to be the owner, or some one for him, will enter into bond, approved by the officer having the complainant in charge, in a penalty equal to double the value of the complainant, supposing him to be a slave, conditioned to have him forthcoming before the said court at the next term thereof, such officer shall deliver to him the complainant.

1 R. C. p. 481, ch.

124, § 1, 2, 3, 5.
1 Wash. 239.
2 H. and M. 19.
3 Leigh 812, 13.
See ante, p. 88,
ch. 13, § 8.

§ 4. The court to which such petition may be presented shall assign the petitioner counsel, who, without reward, shall aid him in the prosecution of his suit; and until the person claiming to be the owner, or some one for him, will enter into bond, before the court or its clerk, in such penalty as the court shall direct, conditioned to have the petitioner forthcoming, to abide the judgment of the court, and in the meantime to allow him reasonable opportunity to prepare for trial, shall deliver him in charge to the proper officer for safe keeping, at the expense of the person so claiming to be owner: but the petitioner may in the mean time be hired out, if the court so order, and the hire shall be disposed of as the court shall direct. The petitioner shall have, free of cost, all needful process, services of officers and attendance of witnesses.

1 R. C. p. 481, ch. 124, § 1, 2, 3.

1 R. C. p. 482, ch. 124, § 7.
4 Rand. 466.

§ 5. It shall be the duty of the counsel to file with the clerk a statement in writing of the material facts of the case, with his opinion thereon; and unless it appear manifest therefrom that the suit ought not to be prosecuted, the court shall cause the person claiming to be the owner to be summoned to answer the petition.

§ 6. The case may be tried, without regard to its place on the docket, at the term of the court to which the summons shall be returned executed; and a jury, free from exception, without the formality of pleading, shall be empaneled to try whether the petitioner be free or not.

1 R. C. p. 482,
§ 8.
6 Call 18.
1 H. & M. 134.
4 Rand. 134.

§ 7. If the verdict be for the petitioner, the jury may find damages for his detention pending the suit; and the court shall adjudge the petitioner to be free and award to him the damages and costs.

2 Call 319.
4 Rand. 134.
4 Leigh 163.
7 Leigh 19.
5 Grat. 12.

§ 8. When slaves are emancipated by will, the nett proceeds of the aggregate of their hires and profits with which the personal representative of the testator is chargeable, or so much thereof as may not be required for the payment of debts, shall, unless inconsistent with the manifest intention of the testator, belong to the persons so emancipated and be apportioned among them as a court of equity having cognizance of the case may deem just.

Id.

§ 9. If any person be found aiding or maintaining a slave in the prosecution of a suit upon such petition, who shall fail to establish his claim to freedom, every such person shall be liable to the owner in an action on the case for damages.

1 R. C. p. 482,
§ 6.

CHAPTER CVII.

OF FREE NEGROES.*

SEC.

1. Negro emancipated since 1806; when not to remain in the state.
2. } How leave to remain granted and
3. } revoked.
4. Leave forfeited by conviction of felony.
5. List of free negroes returned by commissioner of revenue, &c.
6. When and where registered.
7. } When copy of register given to
8. } them; when not.
9. }
10. } Free negro without register, how
11. } punished; may be hired to pay fees.

SEC.

12. } Term of hiring; duty of sheriff.
13. }
14. Employing negro without copy of register, penalty for.
15. } Free negro to be hired out to pay
16. } his taxes, &c.
17. Certificate to persons of mixed blood, *not negroes*, to be given by court.
18. } Free negroes removing into a
19. } county, &c., to apply to the court thereof; how punished if they fail.

* See ante, p. 459, note at end of ch. 103. Former laws as to condition of emancipated negroes. 2 Hen. Stat. vol. 2, p. 267, 280; vol. 3, p. 251, 298, 453, 4; vol. 4, p. 131, 133, 326, 7; vol. 6, p. 361, 533; vol. 7, p. 95; vol. 9, p. 280. The act of January 25, 1806, (Sess. Acts, 1805-6, p. 36, ch. 63, § 10,) enacted that if any slave thereafter emancipated should remain within this state more than twelve months after his right to freedom accrued, he should forfeit such right and might be sold for the benefit of the poor of the county or corporation. This was amended by the act of 1815-16, p. 51, ch. 24, revised in the first volume of the Code of 1819, page 436, 7, § 62, 63. The act of 1806 was also revised in § 61, of the Code of 1819, p. 436. Subsequent acts are (with that of 1819) referred to in the margin of this chapter.

1 R. C. p. 436, ch.
111, § 61.
1826-7, p. 25, ch.
26, 7, 8.
1830-31, p. 107,
ch. 39, § 1, 2, 3.
6 Leigh 607.

§ 1. No negro, emancipated since the first day of May eighteen hundred and six, or hereafter, or claiming his right to freedom under a negro so emancipated, shall, after being twenty-one years of age, remain in this state more than one year without lawful permission.

1 R. C. p. 436,
§ 62.
1836-7, p. 47, ch.
70, § 1.

§ 2. Any such negro may be permitted by the court of any county or corporation to remain in this state, and reside in such county or corporation only, but the order granting the permission shall be void, unless it shew that all the acting justices were summoned, and a majority of them present and voting on the question of permitting said negro to remain in the state, that notice of the application for such permission was posted at the courthouse door for at least two months immediately preceding, that the attorney for the commonwealth, or in his absence some other attorney appointed by the court for the purpose, represented the state as counsel in the case, and that the applicant produced satisfactory proof of his being of good character, sober, peaceable, orderly and industrious. Such permission shall not be granted to any person who, having removed from this state, shall have returned into it. Nor shall any such permission, granted to a female negro, be deemed a permission to the issue of such female, whether born before or after it was granted.

1 R. C. p. 437,
§ 63.
1836-7, p. 48, ch.
70, § 2.

§ 3. The court granting such permission may, for any cause which seems to it sufficient, revoke the same, first summoning the negro to whom it was granted to appear and shew cause, if any he can, against the revocation; and such negro shall not remain in the state more than one year thereafter.

§ 4. If any negro, so permitted to remain, be sentenced for felony by any court of this state or the *United States*, such permission shall, by the sentence aforesaid, and at the termination of his imprisonment under such sentence, if he be imprisoned within this state, be *ipso facto* revoked.

1 R. C. p. 441,
§ 78.
1830-31, p. 107,
§ 3.

§ 5. Every commissioner of the revenue, annually, with his book of personal property, shall return also a complete list of all free negroes in his district, who are over twelve years of age, specifying their names, sexes, ages (as nearly as he can,) and trades or occupations; of which list the clerk shall fix up a copy at the courthouse door, and preserve the original in his office. For a failure in such duty, the commissioner shall forfeit thirty dollars and the clerk fifteen dollars. The commissioner shall also give information to the grand jury of any free negro in such district remaining in this state against law; and in case of failure to give such information, he shall be fined three dollars for every such negro so remaining of whose residence he had knowledge.

1 R. C. p. 438,
§ 67, 71, 76.
1828-9, p. 25, ch.
21, § 2.
1833-4, p. 81, ch.
68, § 10.

§ 6. Every free negro shall, every five years, be registered and numbered in a book to be kept by the clerk of the court of the county or corporation where such free negro resides; which register shall specify his name, age, colour and stature, with any apparent mark or scar on his face, head or hands,

by what instrument he was emancipated, and when and where it was recorded; or that he was born free, and in what county or place. In the case of a negro emancipated since the first day of May eighteen hundred and six, or any descendant of a female negro so emancipated, born after such emancipation, the register shall state whether or no permission has been granted him to reside in this state, and if granted, when and by what court. No such register shall be made until ordered by the court. For making and entering such register and order, the clerk shall have a fee of twenty-five cents.

§ 7. The clerk shall deliver to the free negro an attested copy of his register, with the seal of the court annexed; receiving therefor a fee of twenty-five cents, and no tax for annexing the seal. 1833-4, p. 81, ch. 68, § 10.

§ 8. Before the register of a free negro is renewed, he shall deliver up the copy which he had of his former register, unless the court be satisfied that it has been casually lost or destroyed; nor shall any copy of a register more than five years old avail for any of the purposes of this chapter. 1 R. C. p. 111, § 76.

§ 9. Where a free negro has received a copy of his register, no other copy shall be delivered him (on pain of twenty dollars fine, to be paid by the clerk,) until he shall have delivered up the former copy to be destroyed; unless by special order of the court, upon being satisfied that the former one has been accidentally lost or destroyed. Id. § 71.

§ 10. Any free negro above twelve years of age, residing in this state, not having such attested copy, (of a register of him, made as before directed,) may be committed to jail by a justice, until such copy be produced, or till the court be satisfied that it has been casually lost or destroyed, or that such negro, though really free, has not been registered within five years preceding his arrest; in either of which cases he shall be discharged on paying the jail fees. But if he be so arrested a second time, and be found to have suffered the copy of his register to be lost or destroyed, or not to have had his registry made within five years, he shall be punished with stripes. Id. § 57, 73, 74, 77.

§ 11. If such free negro be unable to pay the jail fees, he shall, by order of the court, be hired out at not less than ten cents a day, till they be discharged; but the jailor shall have no fees in such case, unless, immediately upon such free negro's commitment, he shall have informed the commonwealth's attorney of the fact, in writing, and also have informed the court thereof, at its then or next sitting. The court's order shall specify the amount of jail fees then due. Id. § 73, 77. 1844-5, p. 62, ch. 73, § 1.

§ 12. Such hiring shall be for cash, and (unless the free negro consent to or prefer its being private,) shall be public, to the highest bidder, on court day, in front of the courthouse, and after at least ten days public advertisement; and in no case for a longer time than will suffice at the agreed rate to pay the jail fees; and every hiring for a longer time shall be void. Id. § 2, 3, 4.

§ 13. The sheriff shall return to the clerk's office of the court, within ten days after the hiring, a statement specifying the hirer's name and place of abode, the amount of jail fees, the rate of hire per day, and the day on which the hiring is to expire, and, for failing to do so, shall be fined fifty dollars.

1 R. C. p. 440, 1,
§ 72, 75.
10 Leigh 673.

§ 14. Any person employing any free negro who has not such attested copy of his register, shall forfeit five dollars to any person who will warrant therefor.

1 R. C. p. 434,
§ 58.
1819-20, p. 26,
§ 2.

§ 15. Any free negro failing to pay his taxes or levies for any year or years, and not having visible property out of which they may be made by distress, shall, by order of the county or corporation court, be hired out by its officer for such time as will suffice, at not less than ten cents a day, to raise the said taxes and levies, with a commission to the officer of five per cent. If hired out for a longer time, the hiring as to such excess shall be void, and the free negro may recover of the officer one dollar for every day thereof. If the hirer carry such free negro out of the county or corporation, without his own consent, declared before a justice, and by him certified in writing, the hirer shall forfeit all title to the services of such free negro, and moreover be fined not less than twenty nor more than two hundred dollars.

§ 16. No such hiring of a free negro, in order to pay his taxes or levies, shall be for any which have been in arrear more than five years.

1832-3, p. 51, ch.
80.

§ 17. The court of any county or corporation, upon satisfactory proof, by a white person, of the fact, may grant to any free person of mixed blood, resident therein, a certificate that he is not a negro; which certificate shall protect such person against the penalties and disabilities to which free negroes are subject as such.

§ 18. Free negroes desiring to remove into any county or corporation, shall hereafter apply to the court thereof to be registered. Said courts shall make an order granting or refusing the application, as in their discretion shall seem proper.

§ 19. All free negroes going into any county or corporation, and residing or habitually remaining therein more than two months, without making such application, or found therein at any time after ten days shall have elapsed since said application was made and refused, shall be considered and treated as free negroes going at large without a register.

Title 31.

MARRIAGE, DIVORCE AND DOWER.

- CHAP. 108. Of marriage.
 109. Of divorces.
 110. Of dower and jointure.

CHAPTER CVIII.

OF MARRIAGE.

- | | | | |
|------|---|------|---|
| SEC. | | SEC. | |
| 1. | { Marriage license; how issued and when. | 8. | Register of marriages made on certificate of minister, &c. |
| 2. | | 9. | Fee for celebrating marriage. |
| 3. | | 10. | { Marriage within certain degrees prohibited. |
| 4. | 11. | | |
| 5. | 12. | | |
| 6. | How minister authorized to celebrate rites of matrimony. | 13. | If female under fourteen marry, receiver of her property to be appointed, &c. |
| 7. | Justices how authorized. | | |
| 8. | How celebrated in other cases. | | |
| 9. | Marriage without license prohibited. When marriage not void for want of authority in person solemnizing it. | | |

Marriage license.

§ 1. Every license for a marriage shall be issued by the clerk of the court of the county or corporation in which the female to be married usually resides, or if the office of clerk be vacant, by the senior justice of such county or corporation, who shall make return thereof to the clerk so soon as there may be one. 1 R. C. p. 398, ch. 106, § 16. 1847-8, p. 165, ch. 121, § 3.

§ 2. Every license so issued shall be registered in a book to be kept by the clerk for that purpose.

§ 3. If any person intending to marry be under twenty-one years of age, and has not been previously married, the consent of the father or guardian, or if there be none, of the mother, of such person, shall be given, either personally to the clerk or justice, or in a writing subscribed by a witness, who shall make oath before the clerk or justice that the said writing was signed or acknowledged in his presence by such father, guardian or mother as the case may be. 1 R. C. id. 1831-2, p. 27, ch. 29. 1844-5, p. 59, ch. 67. 1847-8, p. 165, § 1, 2.

Rites of matrimony.

§ 4. When a minister of the gospel shall, before the court of any county or corporation in this state, produce proof of his ordination, and of his being in regular communion with the religious society of which he is reputed a member, and give bond in the penalty of fifteen hundred dollars, such court 1 R. C. p. 394, § 2. 3, 4. 1830-31, p. 102, ch. 35. See ante, p. 88, ch. 13, § 8.

may make an order authorizing him to celebrate the rites of marriage.

1830-31, p. 102,
ch. 25, § 5, 8, 9, 10.
1830-31, p. 103,
ch. 36.

§ 5. The court of any county which deems it expedient, may appoint one or more persons resident in such county to celebrate the rites of marriage within the same, or a particular district thereof, and, upon any person so appointed giving such bond as is required of an ordained minister, may make a like order authorizing him to celebrate the rites of marriage in such county or district, as the case may be. Any order made under this or the preceding section may be rescinded at any future term.

1 R. C. p. 334, § 6.

§ 6. Marriages between persons belonging to any religious society which has no ordained minister, may be solemnized by the persons and in the manner prescribed by and practised in any such society.

§ 7. Every marriage in this state shall be under a license, and solemnized in the manner herein provided; but no marriage solemnized by any person, professing to be authorized to solemnize the same, shall be deemed or adjudged to be void, nor shall the validity thereof be in any way affected, on account of any want of authority in such persons, if the marriage be in all other respects lawful, and be consummated with a full belief on the part of the persons so married, or either of them, that they have been lawfully joined in marriage.

Register of marriage; and fee of person celebrating it.

Id. § 14, 15.
9 Leigh 639.

§ 8. A certificate of every marriage hereafter solemnized, signed by the minister or other person celebrating the same, or, in the case of societies that solemnize their marriages by the consent of the parties in open congregation, by the clerk of the meeting, shall be transmitted by such minister, person or clerk of the meeting, to the clerk of the court of the county or corporation in which the marriage is solemnized, within three months thereafter; which certificate shall be recorded by the clerk within thirty days after its receipt in a book to be kept for that purpose, with a proper index thereto, and a copy thereof from such record shall be evidence of such marriages. If any minister or other person celebrating a marriage, or the clerk of any such meeting, or of any court, shall fail to perform what is hereby required of him, he shall for each failure forfeit sixty dollars.

1 R. C. p. 397, 8,
§ 12, 13.

§ 9. Any person authorized to celebrate the rites of marriage shall be paid by the husband a fee of one dollar in each case. Any person exacting a greater fee shall forfeit to the party grieved fifty dollars.

Marriages within certain degrees of relationship.

Id. p. 399, § 17!
2 Leigh 717

§ 10. No man shall marry his mother, grandmother, step-mother, sister, daughter, granddaughter, half-sister, aunt,

uncle's wife, son's wife, brother's wife, wife's daughter, or her granddaughter or stepdaughter, brother's daughter, sister's daughter, or wife of his brother's or sister's son.

§ 11. No woman shall marry her father, grandfather, step-father, brother, son, grandson, half-brother, uncle, aunt's husband, daughter's husband, husband's son, or his grandson or stepson, brother's son, sister's son, or husband of her brother's or sister's daughter. ^{1 R. C. p. 399, § 17.}

§ 12. In the cases mentioned in the two preceding sections, in which the relationship is founded on a marriage, the prohibition shall continue in force, notwithstanding the dissolution of such marriage by death or by divorce, unless the divorce be for a cause which made the marriage originally unlawful or void.

Female under fourteen marrying.

§ 13. If any female of the age of twelve and under fourteen years, shall marry without the consent of her father or guardian, or if she have none, of her mother, the circuit court of the county in which she resided at the time of such marriage, shall upon the petition of her next friend, commit her estate to a receiver, who shall give bond before the court, and shall hold the said estate, and pay out the rents and profits thereof to her separate use, under the direction of the court during such coverture; and after the determination thereof, all such estate shall be delivered into the possession of the female and her heirs and distributees other than the husband. ^{1 R. C. p. 400, § 20.}

CHAPTER CIX.

OF DIVORCES.

SEC.

1. What marriages void.
2. Of those leaving the state to evade the law.
3. When either party marries under the age of consent; what is the age of consent.
4. } Suit for avoiding or affirming a
5. } marriage; how instituted.
6. } For what, divorces may be decreed.
7. }
8. } Suits for, where instituted, and how
9. } conducted.

SEC.

10. Allowances for maintenance of woman, &c. pending the suit.
11. Divorce for adultery, when not granted.
12. } Decree may dispose of the custody
13. } of the children, and direct the
14. } maintenance of the parties.
15. } Decree may restrain guilty parties
16. } from marrying again.
17. } When and how divorce from bed
18. } and board may be revoked.

§ 1. All marriages between a white person and a negro, and all marriages which are prohibited by law on account of either of the parties having a former wife or husband then living, shall be absolutely void, without any decree of divorce, or other legal process. All marriages which are prohibited by ^{5 Call. 148.}

law on account of consanguinity or affinity between the parties, all marriages solemnized when either of the parties was insane, or incapable from physical causes of entering into the marriage state, shall, if solemnized within this state, be void from the time they shall be so declared by a decree of divorce or nullity, or from the time of the conviction of the parties under the third section of the 196th chapter.

¹ R. C. p. 399,
§ 18.

§ 2. If any person resident in this state, and being within the degree of relationship within which marriages are prohibited by law, shall, in order to evade the law, and with an intention of returning to reside in this state, go into another state or country, and there intermarry, and shall afterwards return and reside here, cohabiting as man and wife, such marriage shall be governed by the same law, in all respects, as if it had been solemnized in this state.

§ 3. In case of a marriage solemnized when either of the parties was under the age of consent, if they shall separate during such nonage, and not cohabit afterwards, the marriage shall be deemed void, without any decree of divorce or other legal process. The age of consent of the male shall be fourteen years, and of the female twelve years.

§ 4. When a marriage is supposed to be void for any of the causes mentioned in the foregoing sections of this chapter, either party may institute a suit for annulling the same; and, upon due proof of the nullity of the marriage, it shall be decreed to be void by a decree of divorce or nullity. But a party who at the time of marriage, as mentioned in the third section, was capable of consenting, with a party not so capable, shall not have power to institute such suit, for the purpose of annulling such marriage.

§ 5. When the validity of any marriage shall be denied or doubted by either of the parties, the other party may institute a suit for affirming the marriage; and, upon due proof of the validity thereof, it shall be decreed to be valid; and such decree shall be conclusive upon all persons concerned.

1826-7, p. 21, ch.
23, § 1, 2.
1840-41, p. 78, ch.
78, § 1, 2.
1847-8, p. 165, ch.
122, § 2, 3.

§ 6. A divorce from the bond of matrimony may be decreed for adultery, for natural or incurable impotency of body existing at the time of entering into the matrimonial contract, or where either of the parties is sentenced to confinement in any penitentiary for life or for seven years or more; and no pardon granted to the party so sentenced, after a divorce for that cause, shall restore such party to his or her conjugal rights.

Id.

§ 7. A divorce from bed and board may be decreed for cruelty, reasonable apprehension of bodily hurt, abandonment, or desertion.

1847-8, p. 165,
§ 1. 5.

§ 8. The circuit courts, on the chancery side thereof, shall have jurisdiction of suits for annulling or affirming marriages, or for divorces. No such suit shall be maintainable unless the parties have cohabited as husband and wife in this state, nor unless the plaintiff is a resident of the state at the time of bringing the suit. The suit shall be brought in the county or

corporation in which the parties last cohabited, or (at the option of the plaintiff,) in the county or corporation in which the defendant resides, if a resident of this state, but if not, then in the county or corporation in which the plaintiff resides.

§ 9. Such suit shall be instituted and conducted as other suits in equity, except that the bill shall not be taken for confessed, and, whether the defendant answer or not, the cause shall be heard independently of the admissions of either party, in the pleadings or otherwise. Costs may be awarded to either party, as equity and justice may require. ^{1847-8, p. 165, § 3.}

§ 10. The court in term or the judge in vacation, may, at any time pending the suit, make any order that may be proper to compel the man to pay any sums necessary for the maintenance of the woman, and to enable her to carry on the suit, or to prevent him from imposing any restraint on her personal liberty, or to provide for the custody and maintenance of the minor children of the parties, during the pendency of the suit, or to preserve the estate of the man, so that it be forthcoming to meet any decree which may be made in the suit, or to compel him to give security to abide such decree. ^{4 H. & M. 507. 4 Rand. 662.}

§ 11. When the suit is for a divorce for adultery, the divorce shall not be granted if it appear that the parties voluntarily cohabited after knowledge of the fact of adultery, or that it occurred more than five years before the institution of the suit, or that it was committed by the procurement or connivance of the plaintiff. ^{1847-8, p. 165, § 5.}

§ 12. Upon decreeing the dissolution of a marriage, and also upon decreeing a divorce, whether from the bond of matrimony or from bed and board, the court may make such further decree as it shall deem expedient, concerning the estate and maintenance of the parties or either of them, and the care, custody and maintenance of their minor children, and may determine with which of the parents the children, or any of them, shall remain; and the court may, from time to time afterwards, on the petition of either of the parents, revise and alter such decree concerning the care, custody, and maintenance of the children, and make a new decree concerning the same, as the circumstances of the parents and the benefit of the children may require. ^{Id. § 4.}

§ 13. In granting a divorce from bed and board, the court may decree that the parties be perpetually separated and protected in their persons and property. Such decree shall operate upon property thereafter acquired, and upon the personal rights and legal capacities of the parties, as a decree for a divorce from the bond of matrimony, except that neither party shall marry again during the life of the other. ^{2 Grat. 350.}

§ 14. In granting a divorce for adultery, the court may decree that the guilty party shall not marry again, in which case the bond of matrimony shall be deemed not to be dissolved as to any future marriage of such party, or in any prosecution on account thereof. ^{1847-8, p. 165, § 2.}

§ 15. When a decree for a separation forever, or for a limited period, shall have been pronounced in a suit for a divorce from bed and board, it may be revoked at any time thereafter by the same court by which it was pronounced, under such regulations and restrictions as the court may impose, upon the joint application of the parties, and upon their producing satisfactory evidence of their reconciliation.

CHAPTER CX.

OF DOWER AND JOINTURE.

SEC.		SEC.	
1.	} Of what a widow shall be endowed.	9.	} How dower recovered with damages.
2.		10.	
3.		11.	} Extent of dower and damages against heirs, &c., and against alienees.
4.		12.	
5.	} Of jointure in bar of dower.	13.	} Right of wife or infant heir not affected by judgment against husband or guardian.
6.		14.	
7.	Dower barred by adultery of wife.		
8.	What widow entitled to before dower assigned.		

1 R. C. p. 403, ch. 107, § 1.
2 Leigh 30.
4 Leigh 30.
12 Leigh 248, 264.

§ 1. A widow shall be endowed of one-third of all the real estate whereof her husband or any other to his use was, at any time during the coverture, seized of an estate of inheritance, unless her right to such dower shall have been lawfully barred or relinquished.

3 and 4 W. iv. ch. 105, § 3.

§ 2. When a husband, or any other to his use, shall have been entitled to a right of entry or action in any land, and his widow would be entitled to dower out of the same, if the husband or such other had recovered possession thereof, she shall be entitled to such dower although there shall have been no such recovery of possession.

§ 3. Where land is *bona fide* sold in the life time of the husband, to satisfy a lien or incumbrance thereon, created by deed in which the wife has united, or created before the marriage, or otherwise paramount to the wife, she shall have no right to be endowed in the said land. But if a surplus of the proceeds of sale remain after satisfying the said lien or incumbrance, she shall be entitled to dower in said surplus, and a court of equity having jurisdiction of the case may make such order as may seem to it proper to secure her right.*

1 R. C. p. 404, § 11, 12.
5 Call. 481.
4 H. & M. 23.
3 Rand. 361.

§ 4. If any estate, real or personal, intended to be in lieu of her dower shall be conveyed or devised for the jointure of the wife, such conveyance or devise shall bar her dower of the real estate or the residue thereof.

Id. and 5 Grat. 414.

§ 5. But if such conveyance or devise were before the marriage, without the assent or during the infancy of the feme, or

* This section was reported by the revisors, without the last clause, so as to conform the law to the opinion of the majority of the judges in *Wilson v. Davison*, 2 Rob. 398. The legislature added the last clause, which conforms to the opinion of the judge who dissented in that case.

if it were after marriage, in either case the widow may, at her election, waive such jointure and demand her dower. And when, she shall demand and receive her dower, the estate so conveyed or devised to her shall cease and determine.

§ 6. If a widow be lawfully deprived of her jointure, or any part thereof, she shall be endowed of so much of the real estate whereof, but for said jointure, she would have been dowable, as is equal in value to that of which she was deprived. ^{1 R. C. p. 405, § 13.}

§ 7. If a wife of her own free will leave her husband, and live in adultery, she shall be barred of her dower, unless her husband be afterwards reconciled to her and suffer her to live with him. ^{Id. § 10.}

§ 8. Until her dower is assigned, the widow shall be entitled to demand of the heirs or devisees one third part of the issues and profits of the other real estate which was devised or descended to them, of which she is dowable; and in the mean time may hold, occupy and enjoy the mansion house and curtilage, without charge; and if deprived thereof may, on complaint of unlawful entry or detainer, recover the possession with damages for the time she was so deprived. ^{Id. § 2, 3. 3 Call 181. 1 Leigh 449.}

§ 9. Dower may be assigned as at common law; or upon the motion of the heirs or devisees, or any of them, the court in which the will of the husband is admitted to record, or administration of his estate is granted, may appoint commissioners, by whom the dower may be assigned, and the assignment, when confirmed by the court, shall have the same effect as if made by the heir at common law. But nothing herein contained shall be construed to take away or affect the jurisdiction which courts of chancery now exercise over the subject of dower. ^{3 Call 13. 5 Call 481. 2 Rand. 418.}

§ 10. A widow having a right of dower in any real estate may recover the said dower, and damages for its being withheld, by such remedy at law as would lie on behalf of a tenant for life having a right of entry, or by a bill in equity where the case is such that a bill would now lie for such dower. ^{See post. ch. 135, § 29.}

§ 11. Whether the proceeding of the widow be against one claiming under an alienation by the husband, in his lifetime, or against his heirs or devisees or their assigns, a recovery of dower in such real estate in kind shall be of a third of the estate as it is when the recovery is had. Against such heirs or devisees, or their assigns, the damages shall be for such time after the husband's death as they have withheld the dower, not exceeding five years before the suit is commenced. Against one claiming under such alienation by the husband, the damages shall be from the commencement of the suit against such claimant. In either case they shall be to the time of the recovery. And if, after suit brought, the widow or the tenant die before such recovery of damages, the same may be recovered by her personal representative, or against his. ^{1 R. C. p. 403, § 4. 3 and 4 W. iv. ch. 27, § 41. 2 Leigh 83. 2 Rob. 597.}

5 Call 433.
4 Leigh 498.

§ 12. The two preceding sections are subject to this qualification, that, on the application of one claiming under an alienation made by the husband in his lifetime, a court of equity may grant him relief from such recovery, on the terms of his paying to the widow, during her life, lawful interest from the commencement of her suit, on one-third of the value, at the husband's death, of the real estate so aliened, deducting the value of such permanent improvements then existing as may have been made, (after the alienation,) by the alienee or his assigns.

1 R. C. p. 404,
§ 6, 7.

§ 13. No widow shall be precluded from her dower by reason of the real estate whereof she claims dower having been recovered from her husband, by a judgment rendered by default or collusion, if she would have been entitled to dower therein, had there been no such judgment. Nor shall any heir who was under the age of twenty-one years at the time dower was assigned to the widow, out of the lands of his ancestor, by his guardian, or by judgment by default or collusion against such guardian, be precluded from recovering the seizin of his ancestor from such widow, unless she shew herself entitled to such dower.

Id. § 9.

§ 14. Crops growing on the dower land of a widow at the time of her death may be bequeathed by her, and shall go to her personal representative, in like manner as crops growing on any other land held for life.

Title 32.

STATE LANDS; AND PROPERTY FORFEITED OR DERELICT.*

CHAP. 111. Of surveyors; their appointment and duties.

112. Of the land office; warrants and grants therefrom.

113. Of escheats; and property forfeited to the state or derelict.

114. Of the transfer in certain cases of the commonwealth's right in lands escheated or forfeited.

CHAPTER CXI.

OF SURVEYORS; THEIR APPOINTMENTS AND DUTIES.

SEC.

1. } Surveyors, how appointed and re-
2. } moved, term of office.
3. }
4. Surveyors to give notice of intend-

SEC.

- ed resignation or application for reappointment.
5. Surveyors, who disabled to be.

* For the ancient mode of acquiring lands in *Virginia*, see an article from *Mr. Tazewell* in the *Va. His. Reg.* for October 1849. And for an outline of the land laws before and since the Revolution, see opinion of Judge *Green* in *Whittington v. Christian, &c.*, 2 Rand, p. 358, *et seq.* See also post note to § 1, 2, 3, of ch. 114.

SEC.

6. } How deputy surveyors appointed.
 7. } Their duties.
 8. }
 9. } How survey made when there is
 10. } no surveyor.
 11. } Survey to be by magnetic meri-
 dian and horizontal measure-
 ment.

SEC.

12. Surveyor to execute orders of
 survey.
 13. } Surveyor's books to be examined.
 14. } Penalty for not producing them.
 15. Surveyor to act until successor
 qualified, &c.
 16. Surveyors appointed by town au-
 thorities.

§ 1. Every county surveyor hereafter appointed shall be commissioned for seven years. 1830-31, p. 87, ch. 27, § 1.

§ 2. When there is, or is soon to be, a vacancy in the office of surveyor in any county, the court thereof shall make a nomination to the executive of some person therefor, who shall be examined by two surveyors in commission, and being certified to be competent shall be commissioned by the governor, if approved by him. Every surveyor shall give bond in such penalty as may be required by the court of his county. 1 R. C. p. 324, ch. 86, § 9. 1820-21, p. 37, ch. 37, § 1. 1830-31, p. 87, § 2. See Ante, p. 88, ch. 13, § 8.

§ 3. The surveyor of any county may be removed from his office by the governor, on the recommendation of the court thereof, for misbehaviour, incapacity or neglect of duty. 1 R. C. p. 324, ch. 86. 1830-21, p. 37, ch. 37, § 1. 1830-31, p. 87, ch. 27.

§ 4. Every surveyor intending to remove from the county, resign his office, or ask a reappointment, shall give notice thereof to the court at least three months before the expiration of his term of office, or before the time of his intended removal or resignation. Id.

§ 5. No person shall hold the office of surveyor of any county, who does not reside in such county, nor shall any clerk or deputy clerk of any county court hold the office of surveyor or deputy surveyor, in the same county; except in the counties of *Nansemond, Isle of Wight, and Alexandria*. 1 R. C. p. 328, § 32; p. 325, § 12. 1848-9, p. 51, ch. 96.

§ 6. On the recommendation of the principal surveyor of any county, one or more deputy surveyors may be appointed by the court thereof, on being satisfied of his or their capacity and fitness. The principal surveyor shall be answerable for the conduct of every such deputy. Id. p. 324, § 11

§ 7. If any surveyor fail to nominate a sufficient number of deputies to enable him to perform the duties of his office in due time, the court of his county shall direct what number he shall nominate; and if he fail to do so, may appoint that number of deputies, who shall have such portion of the surveyor's fees as the court may prescribe.

§ 8. Any deputy surveyor may act in any case in which the surveyor could, except where it is otherwise provided. He shall be subject to the same penalties, and may be removed at the discretion of his principal, when nominated by him, and otherwise at the discretion of the court. Id.

§ 9. Where the office of surveyor is vacant in any county, the clerk of the court thereof shall grant copies from the surveyor's books of records therein, which, when attested by said clerk, and accompanied with an order of his court, certifying that there is no qualified surveyor in the county, shall be ad- Id. § 14, 15. 6 Munf. 271.

missible in evidence in all cases, and with the same effect, as if they had been certified by a surveyor regularly qualified. The clerk, in such case, shall be subject to the same regulations, and liable to the same penalties and damages for negligence or misbehaviour, as a surveyor would be, and shall be entitled to the same fees.

1 R. C. p. 324,
§ 10.

§ 10. Where a survey is necessary, before such vacancy can be filled, the court of the county shall appoint a special surveyor to make it. His survey, when made and returned according to the order of court, shall be as effectual as if it had been made by a county surveyor.

Id. p. 327, § 26.

§ 11. When any surveyor is required to survey lands which have been surveyed before, he shall make such survey by the magnetic meridian, but shall also return and certify in his plat the degree of the variation of the magnetic needle from the true meridian, at the time of the re-survey; and also, (if the same can be done,) the degree of such variation at the time of the original survey; and every survey, whether original or not, shall be made by horizontal measurement. If he shall fail herein, in any respect, the surveyor shall forfeit fifteen dollars to the person for whom such survey is made.

§ 12. Every surveyor shall promptly and faithfully execute any order of survey made by any court, of lands lying in his county, and make due return of a true plat, and certificate thereof; and if he fail to do so, he shall forfeit fifty dollars to the party injured by such failure.

Id. p. 328, § 34.

§ 13. Each county court shall once a year, and oftener if it sees fit, appoint some person to examine the books of entries and surveys in possession of their principal surveyor, who shall report the order and condition in which they are kept. On the death or removal of the surveyor, the person so appointed may take such books into his possession, and deliver them to his successor.

Id. § 36.

§ 14. If any surveyor or other person, in possession of any such book of entries or surveys, shall fail to produce it to the person so appointed to examine the same, or to deliver up the same, in the manner directed in the preceding section, he shall forfeit five hundred dollars.

1830-31, p. 87, § 2.

§ 15. If any vacancy shall occur in the office of surveyor, by failure to recommend or commission, or by expiration of the term of office, the former surveyor shall preserve all papers and records in the said office, and do all the other duties of surveyor, until his successor is qualified, and, on such qualification, shall deliver to him all such records and papers. If any person fail to do as herein directed, in any respect, he shall forfeit five hundred dollars.

1841-2, p. 134, ch.
197, § 38

§ 16. Where by the charter of any town or city the corporate authorities have and exercise the power to appoint a surveyor therefor, such surveyor shall be examined and commissioned in the same manner as county surveyors, and all his official acts shall be as valid as if done by a county surveyor.

CHAPTER CXII.

OF THE LAND OFFICE ; WARRANTS AND GRANTS THEREFROM.

- | SEC. | | SEC. | |
|------|--|------|---|
| 1. | } Register to keep records, &c., of Northern Neck land; no original plat, &c., to be given out. | | <i>caveat</i> decided in favor of defendant, grant to issue. |
| 2. | | 35. | Fees of obtaining grant when refunded to defendant. |
| 3. | Register to file and preserve vouchers, certificates, and register of warrants. | 36. | When commonwealth's right is relinquished to lands settled on. |
| 4. | When warrant to issue. | 37. | When register not to receive plat, &c. |
| 5. | Duplicate obtained for lost warrant. | 38. | When not to issue grant. |
| 6. | } How locations made. | 39. | } Rights of aliens; when and how warrants are assignable. |
| 7. | | 40. | |
| 8. | | 41. | To prevent mistake in application of warrants and grants, register to note the particulars of the case in margin of record. |
| 9. | If not surveyed in two years, entry void. | 42. | When warrant personal and when real estate. |
| 10. | Of warrants not fully satisfied by entry. | 43. | } For removing defects in surveys; defective plats to be returned to surveyor and corrected; penalty for failure; postage paid allowed to register. |
| 11. | } How entry made and surveyed, when there is no surveyor or surveyor is interested. | 44. | |
| 12. | | 45. | |
| 13. | } When and by whom survey to be made. | 46. | |
| 14. | | 47. | } When and in what form grant to issue; to be recorded with plat, &c. |
| 15. | | 48. | |
| 16. | } How survey is to be made; chain-carrier to be sworn. | 49. | Grants to heirs or assigns; what to be recited therein. |
| 17. | | 50. | Register to keep index for each county of grants issued. |
| 18. | | 51. | } When more land is in a patent than it calls for, notice of the fact given by another; when and how such surplus land may be located by him. |
| 19. | } Plats and certificates of survey made, tried and recorded. | 52. | |
| 20. | | | 53. |
| 21. | Surveyor to make annual return of all surveys to the clerk of his court. | 54. | Party giving such notice to give security for costs. |
| 22. | Plat or certificate or a copy, not to be delivered within a year to any but owner or <i>caveator</i> . | 55. | } Owner may correct mistakes and obtain inclusive grant; how. Court to order resurvey; plat, &c. to be returned to register. |
| 23. | Locator when to return plat to land office. | 56. | |
| 24. | Causes for which a <i>caveat</i> may issue, to be stated; effect of failure to enter <i>caveat</i> . | 57. | } <i>Caveat</i> may be had against his obtaining new grant; proceedings thereon. |
| 25. | } Proceedings on a <i>caveat</i> . | 58. | |
| 26. | | | 59. |
| 27. | | 60. | } Proceeding thereon; decree to be certified to register and recorded. |
| 28. | } Proceedings after judgment; when second <i>caveat</i> may issue. | 61. | |
| 29. | | | |
| 30. | Proceedings on such second <i>caveat</i> . | | |
| 31. | Party losing land by a <i>caveat</i> entitled to new warrant, reciting the facts. | | |
| 32. | Party entering <i>caveat</i> to make affidavit. | | |
| 33. | When summons on <i>caveat</i> not executed, new summons to issue. | | |
| 34. | Clerk to return list of <i>caveats</i> ; when | | |

Records of land office ; how kept.

§ 1. The records, documents and entries of land granted by the former lord proprietor of the *Northern Neck*,* and of all

* See Hen. Stat. vol. 2, p. 427 ; p. 518 to 543 ; p. 569 to 583 ; act of 1736 in 4 Hen. Stat. p. 514, ch. 13 ; in 1 R. C. of 1819, p. 343, ch. 89 ; act of 1748 in 6 Hen. Stat. p. 198, ch. 55 ; in 1 R. C. p. 349, ch. 90 ; act of 1785, ch. 47, in 12 Hen. Stat.

1 R. C. p. 350, ch. 91, § 2.

land granted or to be granted by the commonwealth, shall be in the keeping of the register of the land office in the city of *Richmond*.

1 R. C. p. 337, ch. 86, § 64.

§ 2. No original plat and certificate of survey, carried into grant, shall be delivered out of the land office.

Id. p. 323, § 5.

§ 3. The register of the land office shall file and preserve all vouchers and certificates, and keep a register of all warrants issued thereon, shewing the number and date of each warrant, the number of acres for which it issues, the consideration on which it was founded, and the name of the person to whom it issued.

How warrants are issued and entries made.

Id.

Ante, p. 220, ch. 41, § 1; and p. 326, ch. 62.

§ 4. When any person shall lodge in the land office a certificate of the payment into the treasury, in the mode prescribed by the first section of chapter forty-one, of the purchase money of waste and unappropriated land in this state, (not being a common under chapter sixty-two,) or an executive certificate of the allowance of bounty land for military service to this state or the *United States*, the register of the land office shall issue, under his hand and official seal, to the person making such payment or entitled to such certificate, or to his heirs or assigns, a printed warrant specifying the quantity of land and the right in which it is due, and authorizing a surveyor to lay off and survey the same.

2 R. C. p. 334, ch. 11, § 6.

§ 5. Upon the certificate of any court of record, of satisfactory proof having been exhibited before it that a warrant from the land office has been lost, the register shall, unless the original was previously carried into grant, issue another warrant in lieu thereof, or so much thereof as has not been carried into grant, reciting the loss of the original; and thereupon the original, as to so much thereof as is renewed, shall be void.

1 R. C. p. 325, § 17.

1 Call 206.

6 Call 23.

1 Leigh 353.

§ 6. Any holder of a land warrant, other than the principal surveyor of the county in which it is desired to locate it, may lodge it with such surveyor, who shall, if required, give a receipt therefor. Such holder shall make his location so special and precise, that others may be able, with certainty, to locate their warrants on the adjacent lands.

1 R. C. p. 325, § 17, 37.

§ 7. Every location shall bear date the day on which it is made, and shall be entered by the surveyor in a book, to be kept for that purpose, wherein there shall be no blank leaves or spaces between the entries. No entry shall be made, in any case, without a warrant.

d. § 18.

§ 8. Locations shall be made in the order in which the warrants are presented, but they shall have priority according to the dates of their warrants. If two or more such warrants

p. 111; in 1 R. C. p. 350, ch. 91; act of 1796-7, p. 14, ch. 14, in 1 R. C. p. 352; and resolution of 1797-8, p. 46, in 1 R. C. p. 353, ch. 93. As to the decisions under these acts and concerning the title of Lord *Fairfax* and his assignees, see 2 Wash. 106; id. 116; id. 121; 1 Call 190; 4 Call 42; 5 Call 364; 1 Munf. 218; 5 Munf. 1; 9 Leigh 404.

be dated on the same day, the surveyor shall determine the right to priority between them by lot.

§ 9. Every entry which is not surveyed within two years from its date shall be void. ^{1 R. C. p. 326, § 19.}

§ 10. When a partial appropriation of a warrant has been made, the officer making the entry shall certify on the back of the warrant how much of it remains unappropriated, and if the owner of such warrant wishes to locate any portion thereof in any other county than that in which the first location was made, the surveyor in whose office the warrant is filed, shall deliver it to the owner, with such certificate on it; and whenever the whole of any warrant has been appropriated, it shall be returned, with the survey or the last survey made by virtue thereof. ^{Id. § 20.}

§ 11. Any holder of a land warrant desiring to locate it in a county in which there is no surveyor, may lodge it with the clerk of the county court of such county, who shall make an entry of such location in the entry book of his county. A survey of such entry by a surveyor of an adjoining county shall enable the holder to obtain a grant thereon. ^{Id. § 13.}

§ 12. If any principal surveyor is the holder of a land warrant which he desires to locate in his own county, he may lodge it with the clerk of the court of the county, who shall make an entry of such location, and return the same to his next court, there to be recorded. Within six months after such entry, the said surveyor shall have the survey made by one of his deputies, or if he have none, by a surveyor or deputy surveyor of an adjoining county, otherwise the entry shall be void. ^{Id. § 23.}

How and when entries are surveyed.

§ 13. Every surveyor (by himself or his deputy) shall survey with all practicable despatch all entries of land in his county not otherwise provided for. ^{Id. § 24, 28.}

§ 14. The surveyor shall appoint a time for every such survey, and give previous notice thereof in writing, for one month, to the party in person for whom the entry was made, or if he reside within the county may give such notice, by posting the same at the door of the courthouse of the county on the first day of two successive county courts. ^{Id. 22, 24.}

§ 15. If the surveyor shall attend, but neither the said party nor any one for him shall appear at the time appointed, with proper chain-carriers, and a person to mark the line, his entry shall be void. The surveyor shall return him his warrant, to be located anew on any lands liable to entry. But a party so failing to attend shall not be allowed to enter the same warrant on the same land more than twice. ^{Id.}

§ 16. In the plat and return of each survey, the true quantity and the degree of the variation of the magnetic needle, at the time of such survey, and whether the same be east or

west, shall be stated by the surveyor. If he fail to do so, he shall forfeit fifteen dollars to the party injured by such omission.

1 R. C. p. 328,
§ 29.

§ 17. The chain-carriers shall be sworn by the surveyor to measure faithfully, and report truly to him.

Id. § 30.

§ 18. The surveyor shall leave no open lines in making the survey, but shall see the same plainly bounded by marked trees or other objects, (except where a water course or ancient marked line is a boundary,) and shall make the breadth of each survey at least one-third of its length in every part, unless where such breadth shall be restrained on both sides by mountains unfit for cultivation, by water-courses, or the bounds of lands before appropriated.

Id. § 31.

1 Leigh 353.

§ 19. The surveyor shall, within three months after the survey, on application, deliver to the locator, or to his order, a fair and true plat and certificate of such survey, showing the quantity of the land, the courses and descriptions of the several boundaries, natural and artificial, ancient and new, the proper names of such natural boundaries, and the name of every person whose former lines are a boundary, and also the nature of the warrant and rights on which such survey was made.

1 R. C. p. 328,
§ 32.

§ 20. The said plat and certificate shall be tried and examined by the principal surveyor, whether truly made and legally proportioned as to length and breadth, and shall be entered, within three months after the survey, in a well bound book, to be provided by the court of the county at the charge of the county.

Id. § 33.

§ 21. Every principal surveyor shall annually, in January, return to the clerk of his county court a list of all surveys of vacant land made by him or his deputies in the preceding year, with the names of the persons for whom they were made, and the quantity contained in each. Such lists shall be recorded by the clerk.

What is done with plat and certificate of survey.

Id. § 36.
6 Munf. 271.

§ 22. No surveyor shall, within a year after any survey, issue or deliver any certificate or plat of the same, or copy thereof, to any but the person for whom the survey was made, or to his order, or to such person as shall produce a certificate of his having entered a *caveat* against the issuing of a grant upon such survey, from the clerk of the court in which such *caveat* is entered. Any surveyor violating this section shall forfeit to the party injured one hundred dollars for every hundred acres of land in such survey, or be liable to the action of the said party for his damages, at the election of such party.

1 R. C. p. 329,
§ 38.

§ 23. Every person for whom lands shall be so located, shall, within one year after the survey thereof, return the plat

and certificate of the survey to the register of the land office, and may demand of him a receipt for the same.

When a caveat may be entered; proceedings thereon.

§ 24. If the breadth of the land be not one-third of its length, as before directed, or when there has been a failure to make such return, which still continues, any person may enter a *caveat* in the land office against the issuing a grant to the person for whom the survey was made; and if any person shall obtain a survey of land to which another claims a better right, the person having such claim may enter a *caveat*, to prevent the issuing a grant until the right can be determined. In every case, the *caveat*, shall state the cause for which the grant ought not to issue, and in the latter case, the nature of the right on which the plaintiff claims the land. The omission of any person to enter such *caveat*, shall not impair or affect any right he may have at law or in equity, to assert a better right.

1 R. C. p. 329,
332, § 38, 45.
1 Wash. 40, 118.
3 Call 28, 259,
417, 495.
4 Call 196.
2 H. & M. 370.
1 Munf. 293.
4 Munf. 155.
6 Munf. 534.
1 Rand. 114
5 Rand. 453, 509.
4 Leigh 377.
7 Leigh 393.
8 Leigh 681.
1 Rob. 308

§ 25. The person entering any *caveat* shall take from the register of the land office a certified copy thereof, and from the said register, or from the surveyor who made it, a certified copy of the certificate and plat of survey; and within thirty days after entering such *caveat*, shall deliver said copies to the clerk of the county or circuit court of the county in which the land lies. If he fail to do so, the *caveat* shall be void.

1 R. C. p. 330,
§ 41.

§ 26. The said clerk shall enter such copy of the *caveat* in a book to be kept by him for that purpose, and shall issue a summons reciting the cause for which the *caveat* is entered, and requiring the defendant to appear on the first day of the next term of the circuit court, or next quarterly term of the county court, as the case may be, and defend his right.

Id. § 42.

§ 27. On such process being returned executed, the court shall proceed to determine the right of the cause, in a summary way, without pleadings in writing; empanneling a jury, if required by any party, to ascertain any material facts not agreed by the parties.

Id.
6 Munf. 168.

§ 28. If the judgment of the court be in favour of the defendant, upon a copy thereof being delivered into the land office, the *caveat* shall be vacated: if such copy be not so delivered within three months, a new *caveat* may, for that cause, be entered against the grant.

1 R. C. p. 331,
§ 42.

§ 29. If the said judgment be in favour of the plaintiff, upon delivering a copy thereof into the land office, together with a plat and certificate of the survey, (if the same has not been previously returned,) and also producing a legal certificate of new rights on his own account, he shall be entitled to a grant thereof. But if such copy be not delivered, and such certificate be not produced, within six months after such judgment, any person may enter a *caveat* for that cause against issuing the grant.

Id.

1. R. C. p. 231,
§ 42.

§ 30. Upon any second *caveat* entered in pursuance of the two preceding sections, such proceedings shall be had as before directed in the case of an original *caveat*. In any *caveat*, the court may compel the plaintiff to give security for costs, or dismiss the suit; and may adjudge the costs, in its discretion, against either party.

Id.

§ 31. When lands, surveyed upon a warrant as aforesaid, shall, in consequence of a judgment upon a *caveat*, be granted to any other person than the party claiming under such warrant, he shall be entitled to a new warrant from the register for the quantity of land so granted to another, which new warrant shall recite the original warrant and rights, and the cause of granting the new warrant.

Id.

§ 32. No *caveat* shall be entered unless the person wishing to enter the same shall file in the land office an affidavit that such *caveat* is made *bona fide* for the purpose of procuring the lands for the person in whose name the *caveat* is to be entered, and not in trust for any other person. All *caveats* entered contrary to law shall be void.

Id. § 44.

1 Call 206.
Post. ch. 170.

§ 33. If any summons on a *caveat* be not returned "executed," the court shall dismiss the *caveat*, unless it be satisfied that the failure of its return or execution did not proceed from the neglect of the plaintiff, in which case it may award a new summons, or, on proper affidavit, an order of publication may be entered, and the case proceeded in thereupon, according to chapter one hundred and seventy.

1 R. C. p. 332,
§ 46.

8 Leigh 681.

§ 34. The clerk of each circuit and county court, within thirty days after the end of each session of such court, shall return to the register of the land office a list of all *caveats* decided at such session, and where any such *caveat* has been dismissed, or determined in favour of the defendant, the register shall make out grants as if no such *caveat* had been entered.

1 R. C. p. 231,
§ 47.

§ 35. When a *caveat* is decided in favour of the plaintiff, the fees which he shall thereupon pay to the register to obtain a grant, shall be paid over to the person who was compelled in the first instance, on the return of the survey, to pay the fees.

When commonwealth's right is relinquished.

Id. § 40.

5 Leigh 512.
2 Rob. 283.

§ 36. No entry on any lands which have been settled for twenty years prior to the date of such entry, and upon which taxes have been paid at any time within the said twenty years, shall be valid, and any title which the commonwealth may have thereto is hereby relinquished; and any person in possession of such land, and claiming the same under such settlement and payment, may have said land surveyed, and on producing to the court of the county, where the land or some part thereof may lie, proof of such settlement and payment, may have the plat and certificate of the survey thereof, together with such evidence, entered of record; and such record

shall be *prima facie* evidence in any subsequent controversy which may arise with any person claiming under a location made after such record. But this section shall not affect the right of the commonwealth to any lands forfeited by the non-payment of taxes, or by the failure to have such lands entered on the commissioner's books.

Plats of survey not to be received nor grants issued in certain cases.

§ 37. The register of the land office shall not receive into his office any plat and certificate of survey which evidently comprehends the rights of any other than him for whom such survey is made, notwithstanding any deductions or reservations. Every such survey shall be void.

¹ R. C. p. 330, § 39.

⁴ Rand. 365.

§ 38. The said register shall not issue any grant for land upon any survey (other than an inclusive survey made after this act takes effect,) unless there be endorsed on such survey an affidavit of the person applying for the grant that he verily believes that the land embraced in the survey has not been previously appropriated, or that it was at the time of the entry thereof liable to entry.

1838-9, p. 22, ch. 8, § 20.

1839-40, p. 22, ch. 6.

As to rights of aliens; mode of assigning warrants; and of noting warrant or grant in register's office.

§ 39. Aliens as well as citizens may purchase, assign or transfer warrants or certificates of survey for lands, and any alien may locate his warrants and have surveys therefor and shall be allowed two years after the return of any certificate of survey, either to become a citizen, or transfer his right in such certificate to a citizen of the *United States*.

¹ R. C. p. 332, § 49.

² Rand. 206.

§ 40. No warrant shall be assignable but by an assignment in writing endorsed thereon, attested by at least two witnesses.

¹ R. C. p. 333, § 50.

§ 41. When a warrant is renewed or carried into grant, the register shall note the same in the margin of the record-book containing such warrant, opposite thereto, with folio references to the grant or other mode of application. He shall also note in the margin opposite to each grant the warrant or warrants, and survey on which it is founded, with proper folio references to the books in which the same are recorded.

Id. § 48.

When warrants are personal, and when real estate.

§ 42. Every land warrant, or any part thereof, until located, shall be personal estate; but so much thereof as may be so located, until the entry is withdrawn or vacated, shall be real estate.

Id. § 7.

² Rand. 206.

⁴ Rand. 365.

For removing defects in surveys.

§ 43. When a defective plat and certificate of survey is re-

1832-3, p. 9, ch. 5, § 1.

ceived in the land office, the register shall return it to the surveyor of the county in which the survey was made, stating how the defects must be removed.

1832-3, p. 9, ch. 5,
§ 2.

§ 44. The surveyor shall remove the defects if it can be done, and return the plat and certificate to the land office. If the defects cannot be removed, he shall inform the owner thereof, if he resides in the county.

1 R. C. p. 328,
§ 33.
1832-3, p. 9, § 3.

§ 45. If any surveyor fail for one year so to amend, where the amendment is practicable, or if any surveyor fail to perform any other duty prescribed by this chapter, he may be punished at the discretion of a jury, by fine and deprivation of his office, or either.

Id. § 4.

§ 46. The postage on such plat and certificate (if sent by mail) shall be advanced by the register and allowed him in his settlement for fees with the auditor.

Recording plats and certificates of surveys; issuing and recording grants.

1 R. C. p. 333,
§ 53, 54.
3 Call 495.
4 Call 196, 213,
253, 441.
1 H. and M. 307.
1 Munf. 134.
2 Munf. 257.
5 Munf. 220.
6 Munf. 233.
1 Rand. 417.
2 Rand. 206.

§ 47. Within not less than six, nor more than nine months after the right to a grant is complete, in the manner hereinbefore prescribed, the register shall cause to be made out to the party having the right a grant to the following effect: *A. B., governor of the commonwealth of Virginia, to all to whom these presents shall come, greeting: Know ye, that in consideration of the sum of paid by into the treasury of this commonwealth, &c. (or in consideration of military service performed by to this commonwealth, or to the United American States, &c., as the case may be) there is granted by the said commonwealth unto the said a certain tract, or parcel of land, containing acres, lying in the county of , &c., (describing the bounds of the land and date of the survey,) with its appurtenances, to the said and his heirs forever. In witness whereof, the said A. B., governor of the said commonwealth, has set his hand, and caused the seal of the said commonwealth to be affixed hereunto at on the day of in the year , and of the commonwealth . A. B.*

1 R. C. p. 324,
§ 8; p. 333, 4,
§ 53, 55.

§ 48. The register shall deliver such grant to the governor, by whom it shall be signed and sealed with the seal of the state, and returned to the register, who shall record the said grant, and the plat and certificate of survey on which it is founded, in well bound books provided for the purpose at the public charge. The register shall certify the grant to have been registered, and then deliver it to the party to whom it is made, or his order, or to the bearer of the receipt given by him for the survey on which such grant is founded.

Id. p. 334, § 56.

§ 49. Where a grant is made to the heirs or assigns of any person claiming under any warrant, the material circumstances of the title shall be recited in such grant.

§ 50. The register of the land office shall keep a separate index for each county of all patents that have issued, or may hereafter issue, for lands lying in this state. ^{1 R. C. p. 334, § 57.}

Where more land is in a patent than it calls for.

§ 51. Where the boundaries of land in any grant contain more land than the quantity mentioned therein, no person shall enter for any such surplus after the death of the patentee, or after any conveyance or alienation of the lands contained in such patent, nor unless he shall have given a notice of one year to the patentee of his intention to enter for and take such surplus. ^{Id. § 59.}

§ 52. If the patentee shall not within the year proceed to obtain right to, and sue forth a patent for, such surplus land, the person who gave such notice, upon producing a certificate from the clerk of the court of the county in which the patentee resides, or that in which the land lies, that such notice was proved before such court, may demand from the register of the land office a warrant to the surveyor of the proper county to re-survey, at such person's charge, the whole tract within the bounds of the patent; and upon the return of a plat and certificate of such re-survey, and his obtaining and producing new rights for all the surplus land found within the said bounds, after making the lawful allowance to the patentee, the person obtaining said survey may demand and obtain a new grant for such surplus. If the original patentee designate any part of the tract, in which such surplus land may be in one piece, the breadth of which is at least one-third of the length, the said surplus land shall be taken in such part. The grant shall recite the original patent, the re-survey, and other material circumstances.

§ 53. But if, after such notice, the original patentee shall, within the year, re-survey his tract, and it be found there is no such surplus after making an allowance to the patentee of five acres for every hundred for the variation of instruments, the person giving such notice shall pay all the costs of such re-survey, and moreover be liable to an action on the case for damages for his unjust vexation. ^{1 R. C. p. 335, § 60.}

§ 54. Every person giving such notice, shall at the time also give or tender to the patentee sufficient security for any such costs, otherwise such notice shall be void. ^{Id.}

How owner may correct mistakes or obtain inclusive grants.

§ 55. If any person wishes to rectify mistakes or uncertainty in the courses or description of the bounds of his lands, or holds two or more tracts adjoining each other, or owns any locations adjoining such tracts, or any of them, and desires to include them in one grant, he may, in either case, having previously posted a notice of his intention, and the time of the ^{1 R. C. p. 335, § 61.}
^{3 Call 495.}
^{2 H. and M. 55.}

application, at the door of the courthouse of the county in which the land lies, on the first day of two successive county courts, and having also given notice to the owners of the adjoining lands, present a petition to the court of the county aforesaid, reciting the nature of the case, and stating his application.

1 R. C. p. 335,
§ 61.

§ 56. Such court may thereupon order a re-survey of such lands, at the charge of the party, according to his directions and the title papers, taking care not to intrude upon the rights of others. If upon the return of a fair plat and certificate of such survey, the court shall certify that in its opinion such re-survey is just and reasonable, the party may return the same, together with his material title papers, into the land office, and demand the register's receipt for them.

Id.

§ 57. A *caveat* may be obtained against his obtaining a new grant upon such re-survey, and the same proceedings shall be had thereon as in other cases of *caveat*.

Id.

§ 58. If no such *caveat* be entered within six months after the return of the survey, or if being entered it shall be vacated, the party obtaining such survey, upon producing new rights for whatever surplus land appears to be within the bounds thereof, over the allowance of five acres for every hundred, may obtain a new grant for such lands, in which grant shall be recited the dates and other material circumstances of the former title; and thereupon the register shall deliver the title papers to the new owner.

1 Call. 458.

Proceedings to repeal grants.

1 R. C. p. 466, ch.
119, § 1, 3.

2 Rand. 206.
1 Rob. 308.

§ 59. The commonwealth, or any other party desiring to repeal, in whole or in part, any grant of land heretofore or hereafter issued, because it was obtained by fraud, or issued contrary to law, or to the prejudice of such party's equitable right, may file a bill in equity for that purpose in the circuit court of the county or corporation in which the land or some part thereof may lie, exhibiting with the bill a certified copy of the patent, and making all proper parties.

1 R. C. p. 466, ch.
119, § 5.

§ 60. The proceedings thereupon shall be as in other suits in equity, and on the final hearing the court shall make such decree as law and equity may require.

Id. § 7.

§ 61. Any decree for such repeal, in whole or in part, shall be certified to the register of the land office, and the substance thereof entered by him in the margin of the original record of such grant.

CHAPTER CXIII.

OF ESCHEATS, AND PROPERTY FORFEITED TO THE STATE OR DERELICT.

Escheators.

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2. }
3. Who to act when no escheator, &c.

Proceedings to escheat land.

4. Duty of commissioners of revenue.
5. }
6. } How and when inquest held.
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19. }
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21. }
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SEC.

23. Escheator fined for failure of duty.
24. When grant to issue on sale upon credit.
25. Escheator's commission; attorney's fee.
26. Estate held in trust not escheated by alienage of trustee.

Tenant &c., of land, or creditor of alien, provided for.

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28. } Tenant of land, &c. or creditors of alien; their rights not affected; how creditor's claims asserted.
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How property forfeited or derelict is sold or recovered.

30. Property forfeited to state, how sold, &c.
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32. } Proceedings to recover derelict property for the state.
33. }
34. Money paid into treasury for escheats, &c.; when paid out, or person entitled thereto.

Escheators appointed.

§ 1. The governor shall appoint, on the recommendation of the court thereof, one escheator for each town having a corporation court, and for each county, or so much thereof as is without the boundary of such a town. 1 R. C. p. 294, ch. 82, § 1.

§ 2. Each escheator shall give bond in the penalty of three thousand dollars, and may continue in office until removed, or until a successor is duly appointed and qualified. He may be removed by the governor for misbehaviour, incapacity, or neglect of official duty. Id. See ante, p. 88, ch. 13, § 8.

§ 3. Whenever there is no escheator in any such town or county, the sheriff of the county, or sergeant of the corporation, shall act as the escheator therefor, until an escheator is appointed and qualified. And where any proceedings have commenced in the name of any escheator, he shall, unless removed as aforesaid, carry on the same and sell the escheated land, and account for the proceeds, even though another escheator may have been appointed. 1847-8, p. 61, ch. 81.

Proceedings to escheat lands.

1 R. C. 295, § 4.

§ 4. Each commissioner of the revenue shall annually, in May, furnish to the escheator of his county or corporation a list of all lands within his district, of which any person shall have died seized of an estate of inheritance, intestate, and without any known heir, or to which no person is known by him to be entitled; but no land shall be liable to escheat which for twenty years has been in the actual possession of the person claiming the same, or those under whom he holds, and upon which taxes have been paid within that time.

Id. § 5, 6.

§ 5. On receiving such list, or upon information from any person, in writing and under oath, the escheator shall proceed to hold his inquest, to determine whether any land mentioned in said list has escheated to the commonwealth. He shall give notice of the time of taking such inquest by advertisement, at the door of the courthouse, for thirty days, including a court day.

Id. p. 294, § 2, 3.

2 Wash. 154.

§ 6. For his inquest there shall be summoned and returned by the sheriff of the county, or sergeant of the corporation, sixteen freeholders, of whom at least twelve shall be empaneled as jurors. They shall meet at the courthouse and sit in public, and may be adjourned by the escheator from day to day. Every person shall be suffered to give evidence openly in the presence of the jurors.

1 R. C. p. 294, § 2,
3.

§ 7. If any person, summoned or adjourned as a juror, fail to attend according to the summons or adjournment, the escheator shall return the fact to the next circuit court having jurisdiction over the county or corporation in which the land that is the subject of the inquisition may lie; which court may fine such person not exceeding fifty dollars.

Id. § 2.
2 Call 284.

§ 8. When the inquest is ended, and a verdict concurred in by the jurors empaneled, or twelve of them, it shall be signed by those so concurring and by the escheator; and he shall, within thirty days, return it to the clerk of the said circuit court, who shall, within thirty days after receiving it, deliver a copy thereof to the clerk of the court for the county or corporation in which the land may be; and the said last mentioned clerk shall record the same.

1 R. C. p. 295,
§ 7.

5 Leigh 512.

§ 9. When the verdict on such inquest is for the commonwealth, any person claiming any interest in the lands, whether legal or equitable, may, before the sale thereof, petition the said circuit court for redress. To such petition the escheator shall be a defendant. He shall file an answer stating the objections to the claim. And the cause shall be heard without any unnecessary delay, upon the petition, answer and the evidence.

§ 10. The court may cause a jury to be empaneled to ascertain any facts which may be disputed, and if it see fit, may set aside the verdict and have a new jury empaneled.

Its decision shall be such as the rights of the petitioner may require.

§ 11. If witnesses be sworn before the court or jury, and either party require it, the court shall certify what facts were proved by such witnesses, and such certificate shall be a part of the record.

§ 12. Pending the petition the court may commit the lands ^{1 R. C. p. 295, § 7.} or any part thereof to the claimant, on his giving bond with good security, to pay the commonwealth the rents and profits of the same, if the right be found for the commonwealth.

§ 13. If not so committed, the lands shall remain in the ^{1 R. C. p. 295, § 8.} hands of the escheator, or be leased by him to some other, until a year after the publication hereinafter directed, and afterwards, if directed by the court, until the same be sold; and the said escheator shall be answerable (as the right may be determined) to the claimant or to the commonwealth for the rents and profits thereof, and that the same shall be kept free from waste and destruction.*

Proceedings for sale of land and payment of proceeds into treasury.

§ 14. The clerk of each circuit court into which any inquiry ^{Id. § 10.} is returned, shall certify to the governor, within sixty days after the end of a year from the date of such inquiry, whether any claim by petition has been made; and if such claim be made, he shall certify the decision thereon within sixty days after such decision.

§ 15. Every escheator shall, within sixty days after inquiry ^{Id. § 9.} found on behalf of the commonwealth, transmit to the register of the land office a certificate shewing the number of tracts or lots escheated thereby, the reputed quantity of each parcel, the county or corporation in which it lies, and the names of the persons found to have died seized thereof, or from whom the said land escheated.

§ 16. The register shall cause the contents of such certificate ^{Id.} to be published six weeks in some newspaper printed in *Richmond* and in the city of *Washington*, and shall lay before the governor a copy of such certificate.

§ 17. On receipt of such certificate, and of proof of the publication thereof as aforesaid, if claim has not been made ^{1 R. C. p. 295, § 8; p. 298, § 10. 1821-2, p. 17, ch. 15, § 1.} as aforesaid, or, if made, has been decided in favour of the commonwealth, the governor shall order the escheated land to be sold upon such terms, and at such time, not less than twelve months after such publication, and at such place within the county or corporation wherein the lands lie as he may think proper. The order of sale shall be delivered to the first auditor to be transmitted to the escheator, who shall proceed to sell according to such order.

§ 18. When under any treaty now in force between the

* As to information for intrusion, see *Hite's case*, 6 Leigh 588.

United States and any foreign country, time is allowed a citizen or subject of such country to sell said lands, the escheator shall not sell the same until after the expiration of the time so allowed.

1 R. C. p. 296,
§ 11.

§ 19. When the escheator sells for cash, he shall certify the purchase and the price to the register of the land office, who, on receiving a certificate from the treasurer that such price, (deducting the expenses,) has been paid into the treasury, and that the expenses of the inquest and sale have been paid to the escheator, shall have a grant issued and executed for the lands so sold, in like manner as other grants from the commonwealth.

Id. p. 297, § 12.

§ 20. If the purchaser, when the sale is for cash, do not pay the purchase money into the treasury within a reasonable time, the governor may, in his discretion, rescind the contract and order a new sale.

Id. § 13.
1821-2, p. 17, § 1.

§ 21. If the sale be upon credit, in whole or in part, the escheator shall receive the cash payment, and take bonds and other securities, pursuant to the order of sale, payable to the commonwealth, and forthwith return such bonds and securities to the first auditor.

Id.

§ 22. Each escheator shall, within sixty days after receiving any such order of sale, and every sixty days thereafter, report to the first auditor his proceedings under the same, and account with him for, and pay into the treasury, the proceeds of any such sale, and any rents and profits received by him.

1 R. C. p. 297,
§ 15.
1821-2, p. 18, § 2.

§ 23. If any escheator fail to report to and account with the auditor, or fail to pay into the treasury the proceeds of any sale made by him, or any such rents and profits, in the manner and within the time prescribed by law, he shall be fined not exceeding two hundred dollars for every sixty days such failure shall continue. And if any escheator fail to perform any other duty required of him by this chapter, for the failure of which no specific penalty is provided, he shall be fined therefor not exceeding fifty dollars. Any action or motion for any fine under this chapter may be instituted or made, at the discretion of the first auditor, in the general court, or in the circuit court of *Henrico*, after thirty days notice in the case of such motion.

1821-2, p. 17, § 1.

§ 24. When the purchase money shall have been fully paid, according to law, and not before, the register of the land office shall issue a grant, for the lands so sold, to the purchaser, or his heirs or assigns.

1 R. C. p. 298,
§ 15.
1821-2, p. 17, § 1.
1827-8, p. 27, ch.
35.

§ 25. The escheator shall have a commission of ten *per centum* on all proceeds of sales made by him of escheated lands which are paid to him or into the treasury. For each inquest taken by him the escheator shall be paid ten dollars, out of any money in the treasury belonging to the literary fund. The attorney for the commonwealth of the county or corporation court, for attending such inquest, shall also be paid a fee of ten dollars out of the same fund.

Trust estate not to escheat by trustee being an alien.

§ 26. Estate vested in a person merely by way of mortgage or on trust, shall not escheat or be forfeited to the commonwealth by reason of the mortgagee or trustee being an alien, or dying without heirs; but any equitable title to lands shall escheat or be forfeited, so far as it would, if the person having the equitable had the legal title.

4 and 5 Will. iv.
ch. 23, § 3, 4, 5.

5 Munf. 117, 160.
6 Munf. 305.
3 Leigh 492.

Tenant of escheated land, &c., and creditors of alien provided for.

§ 27. If any person holds any escheated land for a term of years, or has right to any rent or other profit out of the same, he shall hold and enjoy his lease, rent or other profit, whether the same be found in the inquisition or not.

1 R. C. p. 298,
§ 17.

§ 28. If any debt, of a person who died seized of lands escheated to the commonwealth, remain unpaid after all the personal estate of such person has been applied to the payment of his debts, the creditor may file his bill in equity to recover such debt, (accompanied with an affidavit that the debt is *bona fide* due,) in the circuit court to which the inquisition of escheat was returned, and make the escheator defendant. If the court shall be of opinion and decree that the said debt or any part thereof is due, the amount decreed to be due shall be paid by the escheator, if so much of the proceeds of sale remain in his hands, or out of the treasury, if so much of such proceeds shall have been paid into and still remain in the treasury, or to the credit of the literary fund.

Id. p. 297, § 14.
4 Leigh 236.

§ 29. The escheator shall answer and defend on the part of the commonwealth any such suit against him, or any petition filed under the ninth section, and shall be allowed the costs incurred by him in defending the same.

1 R. C. p. 299,
§ 20.

How property forfeited or derelict is sold or recovered.

§ 30. Whenever any property is forfeited to the commonwealth, by reason of the violation of any law, the court before which the offender is convicted, shall order the sheriff of the county, or sergeant of the corporation to sell the same. The sale shall be at such time and place, and after such notice at the courthouse door, as in the case of property levied upon, and the clerk shall make return to the auditor, and the officer account for and pay the proceeds of the sale as in the case of a pecuniary forfeiture.

See ante, p. 253,
ch. 49, § 37, and p.
229, 30, ch. 43,
§ 15, et seq.

§ 31. The residuum of a decedent's estate, belonging to the commonwealth, and any property derelict, or having no rightful owner, may be recovered from any person in possession thereof, by a bill in equity in the name of the commonwealth.

1 R. C. p. 83, ch.
33, § 5.

§ 32. When any such suit is instituted, the court shall cause a publication to be made for three months in some newspaper

Id.

printed in the city of *Richmond* and in the city of *Washington*, setting forth the nature of the claim, the name and nativity (where known) of the deceased person, or of the former owner of the property, if known, as the case may be, and describing the property or estate claimed, and requiring all persons claiming an interest therein, to appear and make themselves defendants, by a given day of an ensuing term.

1 R. C. p. 83, ch.
33, § 5.

§ 33. If no person appear and shew title in himself, the court shall decree the residuum or other property to the commonwealth, and enforce the collection thereof, or of the proceeds of the sale of such property.

When money paid into the treasury from escheats, &c. may be recovered.

Id. p. 298 § 19.

§ 34. After any such sale of escheated lands, or such decree for the payment of such residuum of a decedent's estate, or the proceeds of the sale of any such derelict property, any person who had not asserted a claim before the sale or decree, that may be entitled to any lands so escheated and sold, or to such residuum or derelict property, may recover the nett proceeds paid into the treasury under such escheat or decree, as the case may be, except so much in the case of escheated lands, as may have been previously paid to any creditors of the decedent. The same may be allowed by the first auditor; or if the claim in any such case be rejected by him, it may be recovered in the manner provided in the forty-sixth chapter for recovering claims against the commonwealth, but subject to the limitation in the ninth section of said chapter.

See ante, p. 238,
ch. 46

CHAPTER CXIV.

OF THE TRANSFER IN CERTAIN CASES, OF THE COMMON-WEALTH'S RIGHT IN LANDS ESCHEATED OR FORFEITED.

Rights of occupants and junior grantees.

SEC.

1. } Rights of state in forfeited lands
2. } released to them; reservation of
3. } private rights.
3. Such lands not so vested liable to entry.
4. Escheated lands released to occupants, &c.

Proceedings to quiet their titles.

5. } Petition and proceedings on it to
6. } decision.
7. }
8. } Provision for appeal; and when
9. } there is none.

Application of owner of forfeited lands for surplus of sales.

SEC.

10. One claiming to be such owner; how and in what time to proceed.
11. } Court to settle rights to surplus,
12. } and how it shall be paid.
13. Reservation in favor of persons under disability.
14. } How validity of sale may be con-
15. } tested; right of appeal.

General provisions as to petitions.

16. } To what court petition to be; cre-
17. } ditors entitled to.

Rights of occupants and junior grantees.

§ 1. All right, title and interest heretofore vested in the commonwealth, or in the president and directors of the literary fund, in any lands, by reason of forfeiture for the non-payment of taxes thereon for eighteen hundred and thirty-one, or any year previous thereto, or for the failure of the owners thereof to have the same entered on the books of the commissioners of the proper counties and charged with such taxes, are hereby transferred to and vested in any persons (other than those for whose default the same may have been forfeited, and their heirs or devisees,) for so much as such persons may have just title or claim to, from or under grants of the commonwealth, issued heretofore or hereafter upon surveys heretofore made, and who, from the time of such title or claim, shall have paid all taxes duly assessed against them on such lands, and all taxes that ought to have been assessed thereon.

1830-31, p. 91, ch. 28, § 8, 9.
1831-2, p. 60, ch. 70, § 2.
1845-6, p. 14, ch. 6, § 3.

§ 2. The preceding section shall not impair the right or title, legal or equitable, of any other person who shall by title, legal or equitable, derived from or under the commonwealth, *bona fide* claim any such land on which the taxes have been fully paid according to law; but in all such cases of conflicting claim, the parties shall be left to the strength of their respective titles.

1830-31, p. 94, § 16.
1831-2, p. 60, ch. 72, § 2.
1845-6, p. 14, ch. 6, § 3.

§ 3. So much of any such lands as may not have been redeemed by the former owners, or sold by the commonwealth as forfeited lands, by virtue of any act heretofore passed, nor vested in any *bona fide* claimant in pursuance of the two preceding sections, shall be liable to entry, survey and grant, in the same manner as waste and unappropriated land.*

§ 4. All the right, title and interest of the president and directors of the literary fund in any land hereafter escheated to the commonwealth shall be vested in any person who at the time of escheat is in actual possession of the said escheated land, or any part thereof, for so much thereof as such person

1830-31, p. 92, § 10.

* In the Code of 1819, vol. 2, p. 333 to 350, Mr. Leigh gave references to the land laws passed before the revision of 1705, and summaries of the several land laws passed at that revision, and thenceforth to the Revolution. The same volume contains, from page 350 to 484, the series of land laws passed since the Revolution; from page 484 to 507, a series of laws concerning escheats and forfeitures; and from page 508 to 561 a series of laws concerning forfeitures and sales of lands for taxes. The three first sections of this chapter, and the 3d, 4th and 5th sections of chapter 79, ante p. 366, comprise all of the numerous and complicated acts relating to lands forfeited for taxes prior to 1832, or for not entering them on the commissioner's book, which were continued in the Code at the late revision. The reasons why the revisors thought it unnecessary to continue any more of these laws, are given by them in a note to the 5th section of chapter 79, and a note to § 3 of ch. 114 of their reports. It may be useful, however, to preserve here a condensed reference to the most material of those passed since the Code of 1819. They are, 1830-1, p. 87, ch. 28; 1831-2, p. 59, ch. 72; id. p. 67, ch. 73; 1833-4, p. 22, ch. 5, § 1; 1834-5, p. 11, ch. 13; 1835-6, p. 7, ch. 3; 1836-7, p. 9, ch. 8; 1838, p. 16, ch. 8; 1845-6, p. 13, ch. 6. Between 1819 and 1830-31, there were various acts passed, relating to the forfeiture of lands for taxes, to which it is not deemed necessary to give a more special reference.

may have just title or claim to, legal or equitable, *bona fide* held or derived from or under any grant of the commonwealth, issued before the escheat, and who from the time of such title or claim shall have paid all taxes duly assessed against him upon such land, and all taxes that ought to have been assessed thereon.

Proceedings to quiet their titles.

Id. § 11.

§ 5. Any person claiming, as a junior grantee or actual occupant, any such forfeited or escheated lands as are mentioned in the preceding sections hereof, may prefer his petition stating the grounds of his claim, exhibiting the documentary evidence of his right, and describing the situation and quantity of the land claimed by him: the petition shall also specify, as far as may be known, all the persons in whose names the said lands were forfeited or escheated, and any other matters the petitioner may deem material, and shall pray that the petitioner may be quieted in his right to the lands so claimed by him.

Id. § 12.

§ 6. Upon such petition being filed it shall be docketed for hearing without any proceedings at rules, or any further pleadings, but shall not be heard until the term after it is so docketed, nor until one copy of the petition shall have been served on the attorney for the commonwealth in such court, and another copy on the first auditor, proof of which service, by affidavit, shall be filed with the petition at least one month before the hearing.

Id. § 14.

§ 7. On such survey as may be ordered by the court, and on any other evidence for or against the petitioner, the court shall decree upon the right of the petitioner as claimed by him, and either dismiss his petition or affirm his right. The decree in the latter case shall state the situation, description and quantity of the land as accurately as may be.

Id. § 15, 16.

§ 8. The commonwealth or the petitioner, within one year after such decree, may pray an appeal therefrom to the court of appeals. But if, where the decree is for the petitioner no appeal be so prayed and obtained, or if upon such appeal the decree be affirmed, the petitioner shall be forever quieted in his title so far as the right of the commonwealth is concerned.

Id.

§ 9. In all proceedings, however, on any such petition or appeal, whether the decree be for or against the petitioner, or whether, on appeal, it be reversed or affirmed, the costs shall be adjudged against the petitioner.

Owner of forfeited land sold, may apply for surplus.

1838, p. 20, ch.
8, § 13.
1843-4, p. 19, ch.
19, § 1

§ 10. Any person claiming to be the owner of any forfeited land sold under the provisions of an act to amend and explain the laws concerning western land titles, and for other purposes, passed the thirtieth of March, eighteen hundred and thirty-seven, or another act with the same title, passed the fifteenth of

March, eighteen hundred and thirty-eight, the proceeds whereof have been paid into the treasury, may, within ten years after such sale, prefer a petition, and upon proof that the petitioner was the owner of the said land when it was sold, the court shall order the fact to be certified to the first auditor, who shall thereupon certify to the second auditor the amount of the residue of the said proceeds, after deducting all taxes and damages due on said lands, and all the costs and charges of sale.

§ 11. Where there are conflicting claimants, the court may settle between them the right to the surplus, and certify its judgment as aforesaid. ^{1843-4, p. 19, ch 19, § 1.}

§ 12. The second auditor shall draw a warrant for the said surplus, according to the certificate of the first auditor, in favour of the successful claimant. ^{Id.}

§ 13. The benefit of the tenth section shall be saved to infants, married women and insane persons, for three years after their disabilities are removed. ^{Id.}

§ 14. Any person interested in any land sold under the acts aforesaid of the thirtieth of March eighteen hundred and thirty-seven, and of the fifteenth of March eighteen hundred and thirty-eight, may file his petition within three years after such sale, contesting the legality and justice of the sale or order directing it, and, if a sale has been made, shall make the purchaser a party to the petition. ^{Id. § 2.}

§ 15. Any party conceiving himself aggrieved by the decree of the court, on such petition, shall have the right of appeal as in other cases involving the title to land. ^{Id. § 3.}

General provisions as to petitions under this chapter.

§ 16. Every petition under this chapter shall be to the circuit court of the county in which the lands held, claimed or sold, or some part thereof, may lie, and may be filed in the clerk's office. The attorney for the commonwealth in such court shall appear in the case as counsel for the state. And the proceedings and evidence shall be according to the course in chancery. ^{1830-31, p. 93, § 13.}

§ 17. The provisions of this chapter shall enure to the benefit of the creditors of such owner, and the court before whom the petition may be filed shall settle their respective rights.

Title 33.

ESTATES, HOW CONVEYED OR WILLED, AND WHO TAKE IN CASE OF INTESTACY; ALSO OF LIENS BY WRITING.

- CHAP. 115. Of the capacity of aliens and Indians to take and dispose of property.
116. General rules as to the creation and limitation of estates, and their qualities.
117. Forms of deeds; and of covenants.
118. Of acts valid between the parties, but void as to creditors and purchasers.
119. Of the lien on land for the purchase money thereof; or for buildings thereon erected or repaired.
120. Of the appointment of notaries public within, and commissioners without, the state.
121. Of the authentication and record of deeds and other writings.
122. Of wills.
123. Of descents and distributions.

CHAPTER CXV.

OF THE CAPACITY OF ALIENS AND INDIANS TO TAKE AND DISPOSE OF PROPERTY.

SEC.		SEC.	
1.	{ What aliens may hold, convey or transmit real estate.		titled to as to real and personal property.
2.			
3.	{ As to alien becoming a citizen— or whose husband is, or father or mother was, at his birth, a citizen.	6.	Alien allowed by treaty to sell real estate.
4.		7.	Tributary Indians; provision to protect their right to lands.
5.	Alien friend; what privileges en-		

1832-3, p. 26, ch.
34, § 1.

§ 1. Any alien being a free white person, and not an enemy, who shall before some court of record of this state declare on oath that he intends to continue to reside therein, upon such declaration being entered of record, if he be actually resident therein, may inherit, or purchase, and hold real estate, as if he were a citizen of this state.

Id. § 2.

§ 2. Any such alien may convey or devise any real estate so held by him, and if he die intestate, it shall descend to his heirs, and any such alienee, devisee or heir, whether a citizen or an alien, may take under such alienation, devise or descent, provided he shall, if an alien, come or be in this state within five years after the alienation, devise or descent, and, before some court of record thereof, declare on oath that he intends to reside therein.

1 R. C. p. 353, ch.
94, § 1, 2.

§ 3. If any alien being a free white person, having purchased or contracted to purchase any real estate, or holding or having title thereto, shall, before the same is escheated by an office found, become a citizen of the *United States*, or sell or devise the same, or die seized or possessed thereof before any proceedings instituted for the purpose of escheating the same,

5 Call 364.
9 Leigh 404.

such person himself in the first case, and in the second, the purchaser, lessee, heir or devisee from him, if a citizen of the *United States*, shall hold the same free and released from any right or claim of the commonwealth or the literary fund, by reason of such person having been an alien.

§ 4. Any woman whose husband is a citizen of the *United States*, and any person whose father or mother at the time of his birth was a citizen thereof, may take and hold estate real or personal, by devise, purchase or inheritance, notwithstanding he or she may have been born out of the *United States*. ^{7 and 8 Vict. p. 392, ch. 66, § 3, 16. 2 Rand. 276.}

§ 5. Any alien, the subject of a friendly state, may take and hold any personal property except chattels real; and any such alien, being such subject, if he reside within this state, may take and hold any lands for the purpose of residence, or of occupation by him or his servants, or for the purpose of any business, trade or manufacture, for a term of years, not exceeding twenty-one years. An alien taking or holding under this section shall take and hold as fully or effectually, and with the same rights, remedies, exemptions, privileges and capacities, as if he were a natural born citizen of the *United States*, except that he shall not have the right to vote at elections. ^{7 and 8 Vict. p. 392, ch. 66, § 4, 5.}

§ 6. When by any treaty, now in force between the *United States* and any foreign country, a citizen or subject of such country is allowed to sell real property in this state, such citizen or subject may sell and convey the same and receive the proceeds thereof, within the time prescribed by such treaty.

§ 7. The tributary Indians within this state shall not sell or devise any lands, actually possessed or justly claimed by them, to any other person than some of their own tribe or nation, or their descendants; any such bargain, sale or devise shall be null and void. And if any person, other than the said Indians or their descendants, shall purchase or lease, or occupy or till any such land, whether with or without the permission of the Indians, he shall forfeit two dollars every year for each acre of land so purchased, leased, occupied or tilled. ^{1 R. C. p. 69, ch. 25.}

CHAPTER CXVI.

GENERAL RULES AS TO THE CREATION AND LIMITATION OF ESTATES; AND THEIR QUALITIES.

SEC.

1. When deed or will is necessary to convey estate.
2. When person, not named a party or named jointly with others, may take or sue under the instrument.
3. Deeds made by attorney in fact.

SEC.

4. Estates to lie in grant as well as livery.
5. Any interest in, or claim to, real estate, may be disposed of. Estate may commence *in futuro*. Executory limitations by deed good.

SEC.		SEC.	
6.	Deed for property exempt from distress void.	13.	Remainders not defeated by alienation of particular estate, or its union with inheritance.
7.	Deed good for grantor's right, though it purports to pass more. Operation of warranty.	14.	In what conveyances possession transferred to the use.
8.	Words of limitation dispensed with.	15.	Deed of release effectual without lease.
9. }	Fee tail converted into fee simple.	16.	Estates in trust subject to debts, &c. of <i>cestui qui trust</i> .
10. }	What limitations are valid.	17.	Husband entitled to curtesy and wife to dower in trust estate.
11.	Effect of deed to one for life and after to heirs.	18. }	Survivorship between joint ten-
12.	Contingent remainder good without particular estate.	19. }	ants abolished. Exception.

When deed or will is necessary to convey estate.

1 R. C. p. 361, ch. 99; p. 432, ch. 11, § 51; p. 372, ch. 101, § 2.

Call 92, 234.
Munf. 122.
2 Rand. 384.
4 Rand. 332.
6 Rand. 135, 541, 764.
3 Leigh 147.
7 Leigh 119, 590.
9 Leigh 245.
10 Leigh 57.
11 Leigh 439.
3 Grat. 1.

§ 1. No estate of inheritance or freehold, or for a term of more than five years, in lands, shall be conveyed unless by deed or will;* and no gift of a slave or of any goods or chattels shall be valid, unless by deed or will, or unless actual possession shall have come to and remained with the donee, or some person claiming under him. If the donor and donee reside together at the time of the gift, possession at the place of their residence shall not be a sufficient possession within the meaning of this section.

General rules as to deeds.

8 and 9 Vict. p. 1092, ch. 106, § 5.
12 Leigh 204.

§ 2. An immediate estate or interest in, or the benefit of a condition respecting, any estate, may be taken by a person under an instrument, although he be not a party thereto; and if a covenant or promise be made for the sole benefit of a person with whom it is not made, or with whom it is made jointly with others, such person may maintain in his own name any action thereon, which he might maintain in case it had been made with him only, and the consideration had moved from him to the party making such covenant or promise.

8 Leigh 168.
5 Grat. 111.

§ 3. If, in a deed made by one as attorney in fact for another, the words of conveyance or the signature be in the name of the attorney, it shall be as much the principal's deed as if the words of conveyance or the signature were in the name of the principal by the attorney, if it be manifest on the face of the deed that it should be construed to be that of the principal to give effect to its intent.

8 and 9 Vict. p. 1092, ch. 106, § 2.

§ 4. All real estate shall, as regards the conveyance of the immediate freehold thereof, be deemed to lie in grant as well as in livery.

Id. § 6.
1 R. C. p. 369, § 28.
3 Call 480, 488.

§ 5. Any interest in or claim to real estate may be disposed of by deed or will. Any estate may be made to commence *in futuro*, by deed, in like manner as by will. And any estate which would be good as an executory devise or bequest, shall be good if created by deed.

1836-7, p. 47, ch. 69, § 5.
Ante, p. 252, ch. 49, § 34.

§ 6. Any deed of trust, mortgage, or other writing, made by a

* As to resulting trusts, see 7 Leigh 566; effect of cancelling a deed, 10 Leigh 57.

husband or parent, to give a lien on property which is exempt from distress or levy, under the thirty-fourth section of the forty-ninth chapter, shall be void as to such property.

§ 7. A writing which purports to pass or assure a greater right or interest in real estate than the person making it may lawfully pass or assure, shall operate as an alienation of such right or interest in the said real estate as such person might lawfully convey or assure. And when the deed of the alienor mentions that he and his heirs will warrant what it purports to pass or assure, if anything descends from him, his heirs shall be barred for the value of what is so descended or liable for such value.

1 R. C. p. 368,
§ 20, 21.

1 Wash. 388.

1 Call 174.

3 Rand. 361.

2 Rand. 549.

5 Grat. 64.

Estates tail; and words of limitation.

§ 8. Where any real estate is conveyed, devised or granted to any person without any words of limitation, such devise, conveyance or grant shall be construed to pass the fee simple or other the whole estate or interest which the testator or grantor had power to dispose of in such real estate, unless a contrary intention shall appear by the will, conveyance or grant.

1 R. C. p. 369,
§ 27.

7 Will. iv. and 1
Vict. ch. 26, § 28,
30, 31.

1 Wash. 100.

1 Call 127.

3 Call 306.

1 Munf. 537, 549.

2 Munf. 453.

3 Rand. 280.

§ 9. Every estate in lands so limited, that as the law was on the seventh day of October, in the year one thousand seven hundred and seventy-six, such estate would have been an estate tail, shall be deemed an estate in fee simple; and every limitation upon such an estate shall be held valid, if the same would be valid when limited, upon an estate in fee simple, created by technical language.*

1 R. C. p. 369,
§ 25.

§ 10. Every limitation in any deed or will contingent upon the dying of any person without heirs, or heirs of the body, or issue, or issue of the body, or children, or offspring or descendant, or other relative, shall be construed a limitation, to take effect when such person shall die not having such heir or issue, or child or offspring, or descendant, or other relative, as the case may be, living at the time of his death, or born to him within ten months thereafter, unless the intention of such limitation be otherwise plainly declared on the face of the deed or will creating it.

Id. § 26.

7 Will. iv. and 1
Vict. ch. 26, § 29.

§ 11. Where any estate, real or personal, is given by deed or will to any person for his life, and after his death to his heirs, or to the heirs of his body, the conveyance shall be construed to vest an estate for life only in such person, and a remainder in fee simple in his heirs or the heirs of his body.

3 Call 50.

5 Munf. 242.

6 Munf. 470, 581.

* See 3 H. and M. 278, and opinion of president Pendleton in *Carter vs. Tyler*, &c., 1 Call 182, 3, as to the rights of tenants in fee tail, and the legislation of Virginia on the subject, before the act of October 1776, (9 Hen. Stat. p. 226, ch. 26,) "declaring tenants of lands or slaves in tail to hold the same in fee simple." Act of 1783, in 11 Hen. Stat. p. 271, ch. 27; and act of 1785, in 12 Hen. Stat. p. 156. Under these acts of 1776 and 1785 many decisions have been made. The provisions introduced at the Revisal of 1819, in 1 R. C. p. 369, § 25, 26, revised in the 9th and 10th sections of this chapter, have operated somewhat to diminish litigation; but those provisions have no influence upon the judicial construction of limitations in deeds made, and the wills of persons who died, before the 1st of January 1820. See 5 Rand. 273.

Remainders.

1 R. C. p. 369,
§ 28.

§ 12. A contingent remainder shall in no case fail for want of a particular estate to support it.

1 R. C. p. 368,
§ 20.

§ 13. The alienation of a particular estate on which a remainder depends, or the union of such estate with the inheritance by purchase or descent, shall not operate, by merger or otherwise, to defeat, impair or otherwise affect such remainder.

Uses, and trust estates.

1 R. C. 370, § 29.

2 Call 263.
4 Munf. 473.

§ 14. By deed of bargain and sale, or by deeds of lease and release, or by covenant to stand seized to the use, or deed operating by way of covenant to stand seized to the use, the possession of the bargainor, releasor or covenantor, shall be deemed transferred to the bargainee, releasee or person entitled to the use, for the estate or interest which such person has in the use, as perfectly as if the bargainee, releasee or person entitled to the use, had been enfeoffed with livery of seizin of the land intended to be conveyed by such deed or covenant.

4 Vict. p. 209, ch.
21, § 1, 3.
2 Leigh 358.

§ 15. Every deed of release of any estate or interest capable of passing by deeds of lease or release, shall be as effectual for the purposes therein expressed, without the execution of a lease, as if the same had been executed.

1 R. C. p. 370,
§ 30.

2 Leigh 280.

§ 16. Estates of every kind, holden or possessed in trust, shall be subject to debts and charges of the persons to whose use, or to whose benefit, they are holden or possessed, as they would be if those persons owned the like interest in the things holden or possessed, as in the uses or trusts thereof.

1 R. C. p. 370,
§ 31.

3 and 4 W. iv.
ch. 105, § 2.
1 H. and M. 92.
3 H. and M. 321.
1 Rand. 344.
12 Leigh 265.

§ 17. Where a person, to whose use, or in trust for whose benefit another is seized of real estate, has such inheritance in the use or trust, as, if it were a legal right, would entitle such person's husband or wife to curtesy or dower thereof, such husband or wife shall have curtesy or dower of the said estate.

Estate of a joint tenant.

1 R. C. p. 359, ch.
98, § 2.

4 Munf. 316.
2 Rand. 183.
10 Leigh 406.
12 Leigh 264.

3 Rand. 179.
5 Grat. 63.

§ 18. When any joint tenant shall die, whether the estate be real or personal, or whether partition could have been compelled or not, his part shall descend to his heirs, or pass by devise, or go to his personal representative, subject to debts, curtesy, dower or distribution, as if he had been a tenant in common. And if hereafter an estate of inheritance be conveyed or devised to a husband and his wife, one moiety of such estate shall, on the death of either, descend to his or her heirs, subject to debts, curtesy or dower, as the case may be.

§ 19. The preceding section shall not apply to any estate which joint tenants have as executors or trustees, nor to an

estate conveyed or devised to persons in their own right, when it manifestly appears from the tenor of the instrument that it was intended the part of the one dying should then belong to the others. Neither shall it affect the mode of proceeding on any joint judgment or decree in favour of, or on any contract with, two or more, one of whom dies.

CHAPTER CXVII.

FORMS OF DEEDS, AND OF COVENANTS.

Forms of deeds.		Covenants.	
SEC.		SEC.	
1.	} Form of a deed to convey grantor's whole interest.	9.	Effect of certain words in a deed.
2.		10.	} Construction of certain covenants by grantors.
3.	The effect of certain words of release in a deed.	11.	
4.	Form of a lease.	12.	
5.	Form of a deed of trust, to secure debts, &c.	13.	} Where the covenants are in deeds to for land.
6.	Duties and compensation of trustee.	16.	
7.	Appurtenances, &c. included in such deed.	17.	} Particularly, as to covenants in to leases.
8.	Proviso in favour of deeds in other forms.	21.	

A deed to convey the grantor's whole interest.

§ 1. A deed may be made in the following form, or to the same effect: *This deed, made the day of , in the year , between (here insert names of parties,) witnesseth: that in consideration of (here state the consideration,) the said doth (or do,) grant unto the said all, &c.* (Here describe the property, and insert covenants or any other provisions.) *Witness the following signature and seal, (or signatures and seals.)*

§ 2. Every such deed, conveying lands, shall, unless an exception be made therein, be construed to include all the estate, right, title, and interest whatever, both at law and in equity, of the grantor in or to such lands.

§ 3. Whenever, in any deed, there shall be used the words *"The said grantor (or the said ,) releases to the said grantee (or the said ,) all his claims upon the said lands,"* such deed shall be construed as if it set forth that the grantor (or releasor) hath remised, released and forever quit- ted claim, and by these presents doth remise, release, and forever quit claim unto the grantee, (or releasee,) his heirs and assigns, all right, title and interest whatsoever, both at law and in equity, in or to the lands and premises granted (or released) or intended so to be, so that neither he nor his personal repre- sentative, his heirs or assigns, shall, at any time hereafter, have, claim, challenge or demand the said lands and premises, or any part thereof, in any manner whatever.

veyed by the deed or intended so to be, with all the buildings thereon and the privileges and appurtenances thereto belonging, and receive and take the rents and profits thereof, to and for his and their use and benefit, without any eviction, interruption, suit, claim or demand whatever. If to such covenant there be added "*free from all incumbrances*," these words shall have as much effect as the words "and that freely and absolutely acquitted, exonerated and forever discharged, or otherwise by the said grantor or his heirs saved harmless and indemnified, of, from and against any and every charge and incumbrance whatever."

8 and 9 Vict. p.
1242, ch. 119; p.
1262, ch. 124.

§ 15. A covenant by any such grantor, "*that he will execute such further assurances of the said lands as may be requisite*," shall have the same effect as if he covenanted that he, the grantor, his heirs or personal representative, will at any time, upon any reasonable request, at the charge of the grantee, his heirs or assigns, do, execute, or cause to be done or executed, all such further acts, deeds and things, for the better, more perfectly and absolutely conveying and assuring the said lands and premises, hereby conveyed or intended so to be, unto the grantee, his heirs and assigns, in manner aforesaid, as by the grantee, his heirs or assigns, his or their counsel in the law, shall be reasonably devised, advised or required.

Id. § 16. A covenant by any such grantor "*that he has done no act to incumber the said lands*," shall have the same effect as if he covenanted that he had not done or executed, or knowingly suffered, any act, deed, or thing whereby the lands and premises conveyed, or intended so to be, or any part thereof, are, or will be, charged, affected or incumbered in title, estate, or otherwise.

Id. § 17. In a deed of lease, a covenant by the lessee "*to pay the rent*," shall have the effect of a covenant that the rent reserved by the deed shall be paid to the lessor, or those entitled under him, in the manner therein mentioned; and a covenant by him "*to pay the taxes*," shall have the effect of a covenant that all taxes, levies, and assessments upon the demised premises, or upon the lessor on account thereof, shall be paid by the lessee or those claiming under him.

Id. § 18. In a deed of lease, a covenant by the lessee that "*he will not assign without leave*," shall have the same effect as a covenant that the lessee will not, during the term, assign, transfer, or set over the premises, or any part thereof, to any person, without the consent, in writing, of the lessor, his representative or assigns. And a covenant by him that "*he will leave the premises in good repair*," shall have the same effect as a covenant that the demised premises will, at the expiration or other sooner determination of the term, be peaceably surrendered and yielded up unto the lessor, his representatives or assigns, in good and substantial repair and condition, reasonable wear and tear excepted.

3 Call 309.
8 Leigh 532.

§ 19. No covenant or promise by a lessee, that he will leave

the premises in good repair, shall have the effect, if the buildings are destroyed by fire, or otherwise, without fault or negligence on his part, of binding him to erect such buildings again, unless there be other words shewing it to be the intent of the parties that he should be so bound. 12 Leigh 591.

§ 20. A covenant by a lessor "*for the lessee's quiet enjoyment of his term*," shall have the same effect as a covenant that the lessee, his personal representative and lawful assigns, paying the rent reserved, and performing his or their covenants, shall peaceably possess and enjoy the demised premises, for the term granted, without any interruption or disturbance from any person whatever. 8 and 9 Vict. p. 1242, ch. 119; p. 1262, ch. 124.
3 Munf. 556.
9 Leigh 446.

§ 21. And if in a deed of lease it be provided that "*the lessor may re-enter for default of* 8 and 9 Vict. p. 1242, ch. 119; p. 1262, ch. 124. *days in the payment of* 12 Leigh 591. *rent, or for the breach of covenants*," it shall have the effect of an agreement that if the rent reserved, or any part thereof, be unpaid for such number of days after the day on which it ought to have been paid, or if any of the other covenants on the part of the lessee, his personal representative or assigns, be broken, then, in either of such cases, the lessor, or those entitled in his place at any time afterwards, into and upon the demised premises, or any part thereof, in the name of the whole, may re-enter, and the same again have, re-possess, and enjoy, as of his or their former estate.

CHAPTER CXVIII.

OF ACTS VALID BETWEEN THE PARTIES, BUT VOID AS TO CREDITORS AND PURCHASERS.

SEC.

1. As to fraudulent acts. Proviso as to *bona fide* purchasers.
2. Voluntary gifts.
3. Loans; and reservations of use or property to be recorded.
4. } What other contracts and deeds
5. } must be recorded; and where.
6. }
7. Within what time admission to record may be in certain cases.
8. Where goods are removed from

SEC.

- county or corporation, in which record is, to another.
9. Where two deeds for same property are recorded same day.
10. Deeds partly proved in courts abolished; where they may be fully proved.
11. Words "creditors" and "purchasers;" how construed.
12. When a purchaser not affected by record of a deed.

§ 1. Every gift, conveyance, assignment or transfer of, or charge upon, any estate, real or personal, every suit commenced, or decree, judgment or execution suffered or obtained, and every bond or other writing given, with intent to delay, hinder or defraud creditors, purchasers or other persons, of or from what they are or may be lawfully entitled to, shall, as to such creditors, purchasers or other persons, their repre- 1 R. C. p. 372, ch. 101, § 2, 3.
3 Munf. 521.
1 Rand. 213.
3 Rand. 410.
4 Rand. 282.
2 Leigh 84.
6 Rand. 618.
8 Leigh 272.
10 Leigh 475.
3 Grat. 373.

sentatives or assigns, be void.* This section shall not affect the title of a purchaser for valuable consideration, unless it appear that he had notice of the fraudulent intent of his immediate grantor, or of the fraud rendering void the title of such grantor.

2 Call. 183.
2 Rand. 384;
4 Rand. 332.
11 Leigh 137.
1 Rob. 123, 499.
3 Grat. 26.
See post. ch. 149,
§ 13.

§ 2. Every gift, conveyance, assignment, transfer or charge, which is not upon consideration deemed valuable in law, shall be void as to creditors whose debts shall have been contracted at the time it was made, but shall not, on that account merely, be void as to creditors whose debts shall have been contracted, or as to purchasers who shall have purchased, after it was made; and though it be decreed to be void as to a prior creditor, because voluntary, it shall not for that cause be decreed to be void as to subsequent creditors or purchasers.

1 R. C. p. 373,
§ 2.

2 H. and M. 289.
3 H. and M. 449.
4 Munf. 313.
5 Munf. 101, 305,
543.
8 Leigh 80.
9 Leigh 451.
10 Leigh 5, 186.
11 Leigh 403.
2 Grat. 493.
4 Grat. 93.
5 Grat. 379.

§ 3. Where any loan of goods or chattels is pretended to have been made to any person with whom, or those claiming under him, possession shall have remained five years without demand made and pursued by due process of law on the part of the pretended lender, or where any reservation or limitation is pretended to have been made of a use or property, by way of condition, reversion, remainder or otherwise, in goods or chattels, the possession whereof shall have so remained in another as aforesaid, the absolute property shall be taken to be with the possession, and such loan, reservation or limitation, void as to creditors of, and purchasers from, the person so remaining in possession, unless such loan, reservation or limitation, be declared by will, deed or other writing, duly recorded.

1 R. C. p. 362, ch.
99, § 2; p. 365,
§ 13.

3 Leigh 365.

§ 4. Any contract in writing, made, in respect to real estate or goods and chattels, in consideration of marriage, or made for the conveyance or sale of real estate, or a term therein of more than five years, shall, from the time it is duly admitted to record, be, as against creditors and purchasers, as valid as if the contract was a deed conveying the estate or interest embraced in the contract.

1 R. C. p. 372, § 2;
p. 362, § 1, 2, 4;
p. 364, § 11, 12,
13.

1 Rand. 102.
4 Leigh 266, 349.
5 Leigh 520, 182.
10 Leigh 597.
2 Grat. 182.

§ 5. Every such contract, every deed conveying any such estate or term, and every deed of gift, or deed of trust or mortgage, conveying real estate or goods and chattels, shall be void as to creditors† and subsequent purchasers for valuable consideration without notice, until and except from the time that, it is duly admitted to record in the county or corporation wherein the property, embraced in such contract or deed, may be.

1 R. C. p. 372, § 2;
p. 362, § 1, 2, 4;
p. 364, § 11, 12, 13.

2 Grat. 216, 471.

§ 6. Notwithstanding any such writing shall be duly admitted to record in one county or corporation wherein there is real estate or goods or chattels, it shall nevertheless be void as to such creditors and purchasers in respect to other real

* Not as between grantor and grantee; as to the application of the maxims *in pari delicto potior est conditio defendentis*; and *nemo allegans suam turpitudinem est audiendus*, see 4 Rand. 368; 8 Leigh 510; 10 Leigh 321; 12 Leigh 427.

† Whether creditors have notice or not. 4 Rand. 208.

estate or goods or chattels without the same, until it is duly admitted to record in the county or corporation wherein such other real estate, or goods or chattels, may be.

§ 7. The preceding two sections are subject to this qualification, that any such writing which is admitted to record within sixty days from the day of its being acknowledged before and certified by a justice, notary public or other person authorized to certify the same for record, shall, unless it be a mortgage, or a deed of trust, not in consideration of marriage, be as valid as to creditors and subsequent purchasers, as if such admission to record had been on the day of such acknowledgment and certificate.

1 R. C. p. 372, § 2;
p. 362, § 1, 24;
p. 364, § 11, 12.
2 Call 125.
6 Munf. 550.
1 Rand. 219.
4 Leigh 550.

§ 8. If any goods or chattels mentioned in such writing be removed from a county or corporation in which it is admitted to record, the said writing shall, within one year after such removal, be admitted to record in the county or corporation to which the property is so removed; otherwise the same, for so long as it is not admitted to record in such last mentioned county or corporation, shall, as to the property so removed, be void as to such creditors or purchasers. But such writing shall not be so void in respect to the interests of any married woman, infant, or insane person, if, before the end of one year after the disability shall cease, the writing be recorded in the county or corporation to which the property is removed.

1 R. C. p. 364, § 11.
1 Leigh 443.
10 Leigh 497.
2 Grat. 415.

§ 9. Where two or more writings, embracing the same property, are admitted to record in the same county or corporation on the same day, if the previous sections do not provide for the case, that which was first admitted to record shall have priority in respect to the property in such county or corporation.

1 R. C. p. 365,
§ 12.
7 Leigh 98.

§ 10. Any deed, which, before the first day of November in the year eighteen hundred and fourteen, had been partially proven in the general court, in any district court of law, or in a superior court of law, may be fully proven and admitted to record in the court in which it may have been partially proven, if that were the general court, or if it were a former district court, or former superior court, then in the circuit court, the clerk whereof has in custody the records and papers of such district court, or of such superior court. Such admission to record shall have the same effect as to creditors and purchasers, as if, on the day of such admission, the said deed had been admitted to record in the court of the county wherein, on that day, the general court or circuit court is holden.

1 R. C. p. 367,
§ 17.
1821-2, p. 24, ch.
23.

§ 11. The words "creditors" and "purchasers," where used in any previous section of this chapter, or in chapter one hundred and nineteen, shall not be restricted to the protection of creditors of and purchasers from the grantor, but shall extend to and embrace all creditors and purchasers who, but for the deed or writing, would have had title to the property conveyed, or a right to subject it to their debts.

2 Call 198.
5 Rand. 211.
1 Grat. 347.

3 Leigh 363.

§ 12. A purchaser shall not, under this chapter, or chapter one hundred and nineteen, be affected by the record of a deed or contract made by a person under whom his title is not derived, nor by the record of a deed or contract made by any person before the date of a deed or contract made to or with such person, which is duly admitted to record, and from which the title of such person is derived.*

CHAPTER CXIX.

OF THE LIEN ON LAND, FOR PURCHASE MONEY, OR FOR BUILDINGS ON IT ERECTED OR REPAIRED.

SEC.

1. Vendor's equitable lien abolished.

SEC.

2. Mechanics' lien on buildings in towns; how long such lien to continue.

2 Rand. 428.
12 Leigh 343.

§ 1. If any person hereafter convey any real estate, and the purchase money or any part thereof remain unpaid at the time of the conveyance, he shall not thereby have a lien for such unpaid purchase money, unless such lien is expressly reserved on the face of the conveyance.

1842-3, p. 52, ch.
76, § 1.

§ 2. If a person owning or having an interest in land, in a city or town, shall, by a writing signed by him, contract with another to pay him money for erecting or repairing any building or the appurtenances of any building on such land, there shall be a lien for such money on the whole interest of the said person in such land, from the time that the said writing is duly admitted to record in the county or corporation wherein the said land lies. But the said lien shall not be in force more than six months from the time when the money, or the last instalment of the money to be paid under such contract, shall become payable, unless a suit in equity to enforce the lien shall have been commenced within the said six months. If in such suit the lien be established, the court shall order a sale of such interest in the said land, to satisfy the money which ought to be paid under such contract.

* As to recording a paper not required by law to be recorded, its insufficiency to charge third persons with implied notice, see 2 Wash. 280; 2 Rand. 543; and where a paper required to be (and in fact) admitted to record, is not admitted in a legal manner, as to its inefficacy as a recorded paper, see 1 Wash. 319; 1 Call 117; and though it be required to be, and is legally admitted to record, as to the inefficacy of the record, except as against creditors and purchasers, its insufficiency to affect others with implied notice, see 5 Munf. 435.

CHAPTER CXX.

OF THE APPOINTMENT OF NOTARIES PUBLIC WITHIN, AND COMMISSIONERS WITHOUT, THE STATE.

SEC.

1. Notaries public;—how appointed; term of office, and bond.

SEC.

2. Commissioners out of the state; how appointed; lists of them returned and published.

§ 1. The governor shall appoint in this state so many notaries public, and for such counties and corporations as to him shall seem proper, who shall hold their offices during good behaviour. Every notary public shall annually give bond before the court of his county or corporation in such penalty as it may deem sufficient, not being less than two hundred and fifty, nor more than one thousand dollars; and the clerk of said court shall, within sixty days after such bond is taken, transmit a copy thereof to the first auditor.

1 R. C. p. 299, ch. 83, § 1.
1820-21, p. 8, ch. 4, § 6.
1843-4, p. 13, ch. 8, § 1.
See ante, p. 88, ch. 13, § 8.

§ 2. The governor shall appoint out of this state, and within the *United States*, so many commissioners, and for such states, territories and district, as to him shall seem proper, who shall hold their offices during his pleasure; and he shall, within thirty days after the beginning of each annual session of the legislature, communicate to it the names and residence of the persons holding office under such appointment; and lists of such commissioners shall be annually published, with the acts and resolutions of the general assembly.

1843-4, p. 52, ch. 67.

CHAPTER CXXI.

OF THE AUTHENTICATION AND RECORD OF DEEDS AND OTHER WRITINGS.

SEC.

1. } Where and how writings of others
2. } than married women are admitted to record.
3. Certificates; when acknowledged elsewhere than in court or the clerk's office.
4. } How the deed of a married woman
5. } is acknowledged, certified and recorded.
6. If acknowledgment be under a commission prior to 1814, where recorded.

SEC.

7. Effect of acknowledgment, &c. of a wife.
8. Clerk's duty as to recording such and papers annexed to it; also as to index.
9. When original is lost, how copy may be recorded.
10. Clerk's duty as to setting up lists of deeds recorded.
11. Deeds not proved, &c., so as to be recorded, may be copied in a book for preservation.

As to any person other than a married woman.

§ 1. A power of attorney may be admitted to record in any county or corporation court.

2 Rand. 105.
5 Grat. 110.

1 R. C. p. 363, ch. 99, § 6.

Ante, p. 510, ch. 119; p. 508, ch. 118, § 5.

2 H. and M. 132.

§ 2. The court of any county or corporation in which any writing mentioned in the preceding section, or in the one hundred and nineteenth chapter, or in the fifth section of the one hundred and eighteenth chapter, or any deed of emancipation, is to be or may be recorded, or the clerk of any such court, in his office, shall admit to record any such writing as to any person whose name is signed thereto, when it shall have been acknowledged by him, or proved by two witnesses as to him in such court, or before such clerk in his office.

1 R. C. 363, ch. 99, § 7.

2 Grat. 216, 471.

§ 3. Such court or clerk shall also admit any such writing to record as to any person whose name is signed thereto, upon a certificate of his acknowledgment before a justice or notary public within the *United States*, written on or annexed to the same to the following effect, to wit:

County (or corporation) of , to wit: I, a justice of the peace (or notary public) for the county (or corporation) aforesaid, in the state, (or territory or district) of , do certify, that E. F. (or E. F. and G. H. &c.) whose name (or names) is (or are) signed to the writing above, (or hereto annexed,) bearing date on the day of , has (or have) acknowledged the same before me in my county (or corporation) aforesaid. Given under my hand this day of :

1843-4, p. 52, ch. 67, § 7.

Or upon a certificate of the acknowledgment of such person, before any commissioner appointed by the governor within the *United States*, so written or annexed, to the following effect, to wit:

State (or territory or district) of , to wit: I, a commissioner appointed by the governor of the state of Virginia, for the said state (or territory or district) of , certify that E. F. (or E. F. and G. H. &c.) whose name (or names) is (or are) signed to the writing above (or hereto annexed,) bearing date on the day of , has (or have) acknowledged the same before me, in my state, (or territory or district) aforesaid. Given under my hand this day of :

1827-8, p. 22, 3, ch. 28.

2 Leigh 186.

Or upon a certificate of the clerk of any county or corporation court in this state, or of the clerk of any court out of this state, and within the *United States*, that the said writing was acknowledged by such person, or proved as to him by two witnesses before such clerk, or before the court of which he is clerk:

1 R. C. p. 362, § 5; p. 371, ch. 100.

1840-41, p. 76, ch. 65, § 1, 2.

Or upon a certificate under the official seal of any minister plenipotentiary, charge d'affaires, consul-general, consul, vice-consul, or commercial agent, appointed by the government of the *United States* to any foreign country, or of the proper officer of any court of such country, or of the mayor or other chief magistrate of any city, town or corporation therein, that the said writing was acknowledged by such person, or proved as to him by two witnesses, before any person having such appointment, or before such court, mayor or chief magistrate.

As to a married woman.

§ 4. When a husband and his wife have signed a writing purporting to convey or transfer any estate, real or personal, she may appear before a court authorized to admit such writing to record, or before the clerk thereof, in his office, and if, on being examined privily and apart from her husband, by one of the justices of the court, or by the clerk, and having such writing fully explained to her, she acknowledge the same to be her act, and declare that she had executed it willingly, and does not wish to retract it, such privy examination, acknowledgment and declaration, shall be thereupon recorded in such court, or in the clerk's office: Or she may appear before two justices, who shall be present together, or a notary public, within the *United States*, or a commissioner appointed within the same by the governor of this state, and such justices, notary, or commissioner, may so examine her, and if, after such explanation, she make such acknowledgment and declaration, shall certify the same on or annexed to the said writing, to the following effect, that is to say:

State (or territory or district) of _____, county _____
(or corporation) of _____ to wit: I _____, a commissioner
appointed by the governor of the state of Virginia, for the said state
(or territory, or district) of _____ [or, we _____, justices of
the peace, (or I, _____ a notary public) for the county (or
corporation) of _____, in the state (or territory, or district)
of _____,] do certify that E. F., the wife of G. H., whose names
are signed to the writing above, (or hereto annexed) bearing date
on the _____ day of _____, personally appeared before me (or us)
in the county (or corporation) aforesaid, (or if it be a commis-
sioner, in the state, or territory, or district aforesaid,) and
being examined by me (or us) privily and apart from her husband,
and having the writing aforesaid fully explained to her, she, the said
E. F., acknowledged the said writing to be her act, and declared
that she had willingly executed the same, and does not wish to retract
it. Given under my hand (or our hands) this _____ day of _____:
 Or, if the wife be without the *United States*, she may appear before any minister plenipotentiary, charge d'affaires, consul-general, consul, vice-consul, or commercial agent appointed by the government of the *United States*, to any foreign country, or before any court of such country, or the mayor or other chief magistrate of any city, town, or corporation therein, who shall examine her, and make such explanation as is above required where the wife is in the *United States*, and if then she make such acknowledgment and declaration as is so required, the person having such appointment, or such mayor or chief magistrate, or the proper officer of such court, shall give a certificate, under his official seal, of the said examination, explanation and declaration, to the effect required where the wife is in the *United States*, and upon or annexed to such writing in like manner.

A lease.

8 and 9 Vict. p.
1242, ch. 119; p.
1262, ch. 124.

5 Rand. 571.

§ 4. A deed of lease may be made in the following form, or to the same effect: *This deed, made the day of , in the year , between (here insert the names of parties,) witnesseth: that the said doth (or do) demise unto the said , his personal representative, and assigns, all, &c. (here describe the property) from the day of , for the term of , thence ensuing, yielding therefor during the said term, the rent of (here state the rent, and mode of payment.) Witness the following signature and seal, (or signatures and seals.)*

A deed of trust to secure debts or indemnify sureties.

§ 5. A deed of trust to secure debts or indemnify sureties may be in the following form, or to the same effect: *This deed, made the day of , in the year , between , (the grantor) of the one part, and , (the trustee,) of the other part, witnesseth: that the said (the grantor,) doth (or do) grant unto the said (the trustee,) the following property: (here describe it.) In trust to secure, (here describe the debts to be secured, or the sureties to be indemnified, and insert covenants, or any other provisions the parties may agree upon.) Witness the following signatures and seals, (or signature and seal.)*

1 Rand. 306.
1 Rob. 148.
2 Rob. 161.

§ 6. The trustee in any such deed, except so far as may be therein otherwise provided, shall, whenever required by any creditor secured, or any surety indemnified by the deed, or the personal representative of any such creditor or surety, after the debt due to such creditor, or for which such surety may be liable, shall have become payable, and default shall have been made in the payment thereof, or of any part thereof, by the grantor, sell the property conveyed by the deed, or so much thereof as may be necessary, at public auction, for cash, having first given reasonable notice of the time and place of sale; and shall apply the proceeds of sale, first to the payment of expenses attending the execution of the trust, including a commission to the trustee of five *per cent.* on the first three hundred dollars, and two *per cent.* on the residue of the proceeds, and then, *pro rata*, (or in the order of priority, if any, prescribed by the deed,) to the payment of the debts secured, and the indemnity of the sureties indemnified by the deed, and shall pay the surplus, if any, to the grantor, his heirs, personal representatives, or assigns.

1 Rand. 72.

1 Rand. 120.

General provisions as to deeds.

8 and 9 Vict. p.
1242, ch. 119; p.
1262, ch. 124.

§ 7. Every deed, conveying land, shall, unless an exception be made therein, be construed to include all buildings, privileges and appurtenances of every kind belonging to the lands therein embraced.

§ 8. Any deed, or part of a deed, which shall fail to take effect by virtue of this chapter, shall nevertheless be as valid and effectual, and shall bind the parties thereto, so far as the rules of law and equity will permit, as if this chapter had not been enacted.

Covenants.

§ 9. When a deed uses the words "*the said* cove- *id.* nants," such covenant shall have the same effect as if it was expressed to be by the covenantor, for himself, his heirs, personal representatives and assigns, and shall be deemed to be with the covenantee, his heirs, personal representatives and assigns.

§ 10. A covenant by the grantor in a deed, "*that he will warrant generally the property hereby conveyed,*" shall have the same effect as if the grantor had covenanted that he, his heirs and personal representatives, will forever warrant and defend the said property unto the grantee, his heirs, personal representatives and assigns, against the claims and demands of all persons whomsoever.* 3 Rand. 396, 7
4 Leigh 132.

§ 11. A covenant by any such grantor "*that he will warrant specially the property hereby conveyed,*" shall have the same effect as if the grantor had covenanted that he, his heirs and personal representatives, will forever warrant and defend the said property unto the grantee, his heirs, personal representatives and assigns, against the claims and demands of the grantor, and all persons claiming or to claim by, through or under him. id.

§ 12. The words "*with general warranty,*" in the granting part of any deed, shall be deemed to be a covenant by the grantor "*that he will warrant generally the property hereby conveyed.*" The words "*with special warranty,*" in the granting part of any deed, shall be deemed to be a covenant by the grantor "*that he will warrant specially the property hereby conveyed.*" id.

§ 13. A covenant by the grantor in a deed for land, "*that he has the right to convey the said land to the grantee,*" shall have the same effect as if the grantor had covenanted that he has good right, full power and absolute authority, to convey the said land, with all the buildings thereon and the privileges and appurtenances thereto belonging, unto the grantee, in the manner in which the same is conveyed or intended so to be by the deed, and according to its true intent. 8 and 9 Vict. p.
1242, ch. 119; p.
1262, ch. 124.
6 Munf. 306.
3 Rand. 397.

§ 14. A covenant by any such grantor, "*that the grantee shall have quiet possession of the said land,*" shall have as much effect as if he covenanted that the grantee, his heirs and assigns, might, at any and all times thereafter, peaceably and quietly enter upon and have, hold and enjoy, the land con- 8 and 9 Vict. p.
1242, ch. 119; p.
1262, ch. 124.

* As to the measure of relief on such warranty in case of eviction, see 3 Call 220; 1 H. and M. 202; 2 H. and M. 164; 1 Munf. 500; 4 Munf. 332; 5 Munf. 415; 2 Rand. 132.

1847-8, p. 81, ch.
106.

§ 5. Such certificate, either where the wife is within or without the *United States*, shall be admitted to record at the time of admitting the writing to which it is annexed, or on which it is.

1 R. C. p. 367,
§ 19.

§ 6. Where a commission for the privy examination of a married woman, issued before the first day of November eighteen hundred and fourteen, from the office of the general court, or a former district court or superior court of law, shall appear to have been executed and not recorded, the same, and the certificate of the execution thereof, shall be admitted to record in the court of the county or corporation in which it would be proper to record the writing to which such commission is annexed, if made after this chapter takes effect.

Id. § 15.

6 Leigh 9.

§ 7. When the privy examination, acknowledgment and declaration of a married woman shall have been so taken and recorded in court, or in the clerk's office, or when the same shall have been taken and certified as aforesaid, and the writing to which such certificate is annexed, or on which it is, shall have been delivered to the proper clerk and admitted to record as to the husband as well as the wife, such writing shall operate to convey from the wife her right of dower in the real estate embraced therein, and pass from her and her representatives all right, title and interest of every nature, which, at the date of such writing, she may have in any estate conveyed thereby, as effectually as if she were, at the said date, an unmarried woman; and such writing shall not operate any further upon the wife, or her representatives, by means of any covenant or warranty contained therein.

3 Call 394.

Clerk's duty as to recording, and making index and list of the writings.

1 R. C. p. 362,
§ 3; p. 367, § 18.
1823-9, p. 29,
ch. 27.

§ 8. Every writing so admitted to record shall, with all certificates of privy examination or acknowledgment, and all plats, schedules and other papers thereto annexed, or thereon endorsed, be recorded by, or under the direction of the clerk, in a well bound book, to be carefully preserved; and there shall be an index to such book as well in the name of the grantee as of the grantor. After being so recorded, such writing may be delivered to the party entitled to claim under the same.

1829-30, p. 22,
ch. 16.

§ 9. If it be proper for such writing to be admitted to record in the court of another county or corporation, and the same, before being so admitted to record in the court last mentioned, be lost or mislaid, on affidavit of this fact, such court, or the clerk thereof, may admit to record a copy of such writing from the records of another court, certified by its clerk; and the copy so admitted shall have the same effect as if the original had been admitted to record at the time of the copy being admitted.

1 R. C. p. 363,
§ 8, 9.

§ 10. The clerk of every county and corporation court

shall, on the first day of each term, set up early in the morning, at the door of the courthouse, a list of all writings admitted to record under this chapter during or since the preceding term, specifying in such list the date and nature of every such writing, the names of the parties thereto, and the day it was admitted to record, and also describing the property which is the subject thereof. A duplicate of such list shall on the same day be laid before the court, read to it, and inserted in the minutes. Any clerk violating this section shall forfeit one hundred dollars.

§ 11. If any writing which it is lawful for a clerk to admit to record, on proper acknowledgment or proof, has been or shall be lodged in his office, and has remained or shall remain therein six months without being acknowledged or proved, so that it can be duly admitted to record, the clerk shall, for the preservation thereof, when required by any person interested, copy the same in a book separate from those in which writings so admitted are recorded, and keep an index to such book, as in the case of writings duly admitted to record.

CHAPTER CXXII.

OF WILLS.

SEC.		SEC.	
1.	Construction of the word "will."	22.	On what wills this chapter operates, and when a will is deemed made, &c.
2.	Who may make a will; who not.	23.	What court has jurisdiction of the probat of wills. Power to appoint curator and his duty.
3.		24.	
4.	Mode of executing wills prescribed.	25.	How original will required to be produced. When copy may be admitted to probat.
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9.	Conveyance subsequent to will, not to prevent its effect upon the interest of testator at his death.	32.	Power of court as to other testamentary papers; trial by jury; effect of the judgment.
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11.	Will construed as if made just before testator's death.	34.	Motion for probat may be made <i>ex parte</i> and decided. Bill and issue <i>devisavit vel non</i> .
12.	When advancement deemed satisfaction of devise or bequest.	35.	Saving in favor of those not parties to proceedings.
13.	Devises and bequests which lapse or fail to take effect.	36.	Record of what is proved at time of probat, to be read on trial before jury.
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15.	Devises in general terms; how construed in certain cases.		
16.			
17.	Pretermitted children; how provided for.		
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19.	When and how devisee or legatee a competent witness to a will.		
20.	Competency of creditors and executors.		
21.			

Construction of the word "will."

§ 1. Except where it would be inconsistent with the manifest intent of the legislature, the word "will" shall extend to

7 Will. iv. and
1 Vict. ch. 26, § 1.

a testament, and to a codicil, and to an appointment by will or by writing in the nature of a will in exercise of a power; and also to any other testamentary disposition.

Who may make wills; how they are executed, revoked, altered, or revived.

1 R. C. p. 375, ch. 104, § 1, 61.
1834-5, p. 43, ch. 60.

Will. iv. and
Vict. ch. 26,
3

1 Wash. 75,
3 Call 289.
8 Leigh 468.

1 R. C. p. 375,
§ 1; p. 377, § 6.
1834-5, p. 43, ch. 60.

7 Will. iv. and 1
Vict. ch. 26, § 3.

1 R. C. Id.
1822-3, p. 27, ch. 27, § 2.
1834-5, p. 43, ch. 60.
1839-40, p. 50, ch. 57, § 2.
7 Will. iv. and 1
Vict. ch. 26, § 9,
13.

7 Will. iv. and
1 Vict. ch. 26, § 9.
Gilm. 27.

4 Rand. 566.
8 Leigh 20;
9 Leigh 200;
10 Leigh 13.

2 Grat. 438.

1 R. C. p. 377,
§ 10.
1834-5, p. 43,
ch. 60.

§ 2. Every person, not prohibited by the following section, may by will dispose of any estate to which he shall be entitled at his death, and which, if not so disposed of, would devolve upon his heirs, personal representative, or next of kin. The power hereby given shall extend to any estate, right or interest, to which the testator may be entitled at his death, notwithstanding he may become so entitled subsequently to the execution of the will.

§ 3. No person of unsound mind, or under the age of twenty-one years, shall be capable of making a will, except that minors eighteen years of age, or upwards, may, by will, dispose of personal estate. Nor shall a married woman be capable of making a will, except for the disposition of her separate* estate, or in the exercise of a power of appointment.

§ 4. No will shall be valid unless it be in writing and signed by the testator, or by some other person in his presence and by his direction, in such manner as to make it manifest that the name is intended as a signature;† and moreover, unless it be wholly written by the testator, the signature shall be made or the will acknowledged by him in the presence of at least two‡ competent witnesses, present at the same time;|| and such witnesses shall subscribe the will in the presence of the testator,§ but no form of attestation shall be necessary.

§ 5. No appointment made by will, in exercise of any power, shall be valid, unless the same be so executed that it would be valid for the disposition of the property to which the power applies, if it belonged to the testator; and every will so executed, except the will of a married woman, shall be a valid execution of a power of appointment by will, notwithstanding the instrument creating the power expressly require that a will made in execution of such power shall be executed with some additional or other form of execution or solemnity.

§ 6. Notwithstanding the two next preceding sections, a soldier being in actual military service, or a mariner or seaman being at sea, may dispose of his personal estate as he might heretofore have done; and the will of a person domiciled

* As to will of separate estate, see 3 Rand. 373.

† Accord. *Waller, &c., v. Waller*, 1 Grat. 454.

‡ See 6 Rand. 316; 5 Leigh 589.

|| 1 Rand. 131, 468; 3 Leigh 436.

§ 1 Leigh 6; 3 Leigh 446; 10 Leigh 13.

out of this state at the time of his death, shall be valid as to personal property in this state, if it be executed according to the law of the state or country, in which he was so domiciled.

§ 7. Every will made by a man or woman shall be revoked by his or her marriage, except a will made in exercise of a power of appointment, when the estate thereby appointed would not, in default of such appointment, pass to his or her heir, personal representative, or next of kin.

7 Will. iv. and 1
Vict. ch. 26, § 18.
1 R. C. p. 376, § 3.
1 Wash. 140.
3 Call 334.

§ 8. No will or codicil or any part thereof, shall be revoked, unless under the preceding section, or by a subsequent will or codicil, or by some writing declaring an intention to revoke the same, and executed in the manner in which a will is required to be executed, or by the testator, or some person in his presence and by his direction, cutting, tearing, burning, obliterating, cancelling or destroying the same, or the signature thereto, with the intent to revoke.

1 R. C. p. 376, 7,
§ 3, 9.
7 Will. iv. and
1 Vict. ch. 26,
§ 20.
1 Call 479.
3 H. & M. 502.
3 Leigh 32.
12 Leigh 316, 535.
1 Rob.

§ 9. No will or codicil, or any part thereof, which shall be in any manner revoked, shall, after being revoked, be revived otherwise than by the re-execution thereof, or by a codicil executed in manner hereinbefore required, and then only to the extent to which an intention to revive the same is shewn.

7 Will. iv. and 1
Vict. ch. 26, § 22.

§ 10. No conveyance or other act, subsequent to the execution of a will, shall, unless it be an act by which the will is revoked as aforesaid, prevent its operation, with respect to such interest in the estate comprised in the will, as the testator may have power to dispose of by will at the time of his death.

Id. § 23.
2 Munf. 209.
8 Leigh 614.

On what, and in whose favor, will operates.

§ 11. A will shall be construed, with reference to the real estate and personal estate comprised in it, to speak and take effect as if it had been executed immediately before the death of the testator, unless a contrary intention shall appear by the will.

7 Will. iv. and 1
Vict. ch. 26, § 24.
3 Call 289.
5 Munf. 272.

§ 12. A provision for or advancement to any person shall be deemed a satisfaction in whole or in part of a devise or bequest to such person, contained in a previous will, if it would be so deemed in case the devisee or legatee were the child of the testator; and whether he be a child or not, it shall be so deemed in all cases in which it shall appear from parol or other evidence, to have been so intended.*

5 Rand. 577.
6 Rand. 176.
12 Leigh 2, 316.

§ 13. If a devisee or legatee die before the testator, leaving issue who survive the testator, such issue shall take the estate

1 R. C. p. 376, § 5.
7 Will. iv. and
1 Vict. § 33.

* The revisors reported as part of § 11, the following: "And no provision for, or advancement to a child, or other person, hereafter made, shall be deemed a satisfaction in whole or in part of a devise or bequest to such child or other person, contained in a previous will, unless it plainly appear by a writing, signed by the testator, that it was so intended." Their object, as explained in a note to their report, (p. 625, 6,) was to abolish the well known rule in equity as to advancements to children or persons to whom the testator stood *in loco parentis*. The legislature, however, adopted instead of the clause proposed by the revisors, the section to which this note is appended. The effect is to preserve the rule in equity referred to, and extend it to all persons.

devised or bequeathed, as the devisee or legatee would have done, if he had survived the testator, unless a different disposition thereof be made or required by the will.

Id.
2 Leigh 642.

§ 14. Unless a contrary intention shall appear by the will, such real estate or interest therein as shall be comprised in any devise in such will, which shall fail or be void, or otherwise incapable of taking effect, shall be included in the residuary devise, (if any,) contained in such will.

7 Will. iv. and 1
Vict. ch. 26, § 27.

1 Wash. 300.

§ 15. A devise of the land of the testator, or of the land of the testator in any place, or in the occupation of any person mentioned in his will, or otherwise described in a general manner, and any other general devise which would describe a leasehold estate, if the testator had no freehold estate which could be described by it, shall be construed to include his leasehold estates, or any of them, to which such description shall extend, as well as freehold estates, unless a contrary intention shall appear by the will.

7 Will. iv. and
1 Vict. ch. 26,
§ 27.

§ 16. A devise or bequest shall extend to any real or personal estate, (as the case may be,) which the testator has power to appoint as he may think proper, and to which it would apply if the estate were his own property, and shall operate as an execution of such power, unless a contrary intention shall appear by the will.

Of pretermitted children.

1 R. C. p. 376,
§ 3, 4.
1839-40, p. 49,
ch. 56, § 3.

§ 17. If any person die leaving a child, or his wife *enciente* of a child, which shall be born alive, and leaving a will made when such person had no child living, wherein any child he might have is not provided for or mentioned, such will, except so far as it provides for the payment of the debts of the testator, shall be construed as if the devises and bequests therein had been limited to take effect, in the event that the child shall die under the age of twenty-one years, unmarried and without issue.

Id.
3 Call 334.
3 Munf. 20.
2 Rob. 570.

§ 18. If a will be made when a testator has a child living, and a child be born afterwards, such after-born child, or any descendant of his, if not provided for by any settlement, and neither provided for, nor expressly excluded by the will, but only pretermitted, shall succeed to such portion of the testator's estate as he would have been entitled to if the testator had died intestate, towards raising which portion the devisees and legatees shall, out of what is devised and bequeathed to them, contribute ratably, either in kind or in money, as a court of equity, in the particular case, may deem most proper. But if any such after-born child, or descendant, die under the age of twenty-one years, unmarried and without issue, his portion of the estate, or so much thereof as may remain unexpended in his support and education, shall revert to the person to whom it was given by the will.

Competency of witnesses to will.

§ 19. If a will be attested by a person to whom, or to whose wife or husband, any beneficial interest in any estate is thereby devised or bequeathed, if the will may not be otherwise proved, such person shall be deemed a competent witness, but such devise or bequest shall be void, except that, if such witness would be entitled to any share of the estate of the testator, in case the will were not established, so much of his share shall be saved to him as shall not exceed the value of what is so devised or bequeathed.

1 R. C. p. 377,
§ 11,
7 Will. iv. and
1 Vict. ch. 26,
§ 15
4 Grat. 103.

§ 20. If a will, charging any estate with debts, be attested by a creditor, or the wife or husband of a creditor, whose debt is so charged, such creditor shall, notwithstanding, be admitted a witness for or against the will.

7 Will. iv. and
1 Vict. ch. 26,
§ 16.

§ 21. No person shall, on account of his being an executor of a will, be incompetent as a witness for or against the will.

Id. § 17.
1 Grat. 18.

On what wills this chapter operates ; when will deemed made.

§ 22. The preceding sections of this chapter shall not extend to any will made before this act is in force, but the validity and effect of such will, shall be determined by the laws in force on the day before this chapter takes effect, in like manner as if those laws, so far as they relate to the subject, were herein enacted in place of such sections. Every will re-executed or re-published, or revived by any codicil, shall, for the purposes of this chapter, be deemed to have been made at the time at which the same shall be so re-executed, re-published or revived.

Id. § 34.

Of the probat and record of wills ; and the appointment of a curator.

§ 23. Jurisdiction as to the probat of wills,* and to hear and determine suits and controversies testamentary, shall be in the general court. The circuit, county and corporation courts shall also have jurisdiction thereof, according to the following rules, that is to say : in the county or corporation wherein the decedent has a mansion house or known place of residence ; if he has no such house or place of residence, then in a county or corporation wherein any real estate lies that is devised or owned by the decedent ; and if there be no such real estate, then in the county or corporation wherein he dies, or a county or corporation wherein he has estate.

1 R. C. p. 377,
§ 12, 16.
1831-2, p. 57, ch.
69.
6 Rand. 33.
2 Leigh 248, 719.
9 Leigh 119.

§ 24. Such court may appoint a curator of the estate of a decedent, during a contest about his will, or during the infancy or in the absence of an executor, or until administration of the estate be granted ; taking from him bond in a reasonable pen-

1 R. C. p. 380,
§ 24, 25; p. 386,
§ 42.
8 Leigh 264.
9 Leigh 342.

* Whether necessary that a will should be proved in a court of probat to give it validity as a will of lands, see 2 Rand. 190 ; id. 206 ; and post, ch. 130, § 6, and ch. 131, § 1, 2.

See ante, p. 88,
ch. 13, § 8.

alty. The curator shall take care that the estate is not wasted before the qualification of an executor or administrator. He may demand, sue for, recover and receive all debts due to the decedent, and all his other personal estate, and, likewise, if a will be in contest, any rents and profits of real estate which, if it were established, an executor or administrator with the will annexed, could receive. He shall pay debts, and may be sued in like manner as an executor or administrator, and upon the qualification of an executor or administrator, shall account with him for, and pay and deliver to him, such estate as he has in his hands, or is liable for.

1 R. C. 379, § 19.

§ 25. Any such court, on being informed that a person has in his custody the will of a testator, may summon him, and by proper process compel him to produce the same.

1d. § 16.
1831-2, p. 57, ch.
69.
1843-4, p. 54, ch.
68, § 2.

§ 26. Where a will relative to estate within this state has been proved without the same, an authenticated copy thereof, and the certificate of probat thereof, may be offered for probat in this state. When such copy is so offered, the court to which it is offered shall presume, in the absence of evidence to the contrary, that the will was duly executed and admitted to probat as a will of personalty in the state or country of the testator's domicil, and shall admit such copy to probat as a will of personalty in this state. And if it appear from such copy that the will was proved in the foreign court of probat to have been so executed as to be a valid will of lands in this state by the law thereof, such copy may be admitted to probat as a will of real estate.

4 Call 89.
1 Rand. 108.
3 Leigh 816.

1 R. C. p. 378,
§ 15; p. 521, ch.
131, § 20.
1822-3, p. 27, ch.
27, § 1.
1838, p. 72, ch. 92,
§ 5.

§ 27. When any will, or any such authenticated copy, is offered for probat, and a witness attesting the same resides out of this state, or though in the state, is in confinement in another county or corporation, under legal process, or is unable from sickness, age or other infirmity, to attend the court before which the same is offered, such court may cause a commission, to take his deposition, to be issued, annexed to the said will or copy, and directed to any person authorized by law to take depositions in other cases; the deposition of such witness shall be taken and certified as depositions are taken in other cases, except that no notice need be given of the time and place of taking the same, unless it be in a case in which the probat is opposed by some person who has made himself a party; and the proof so given shall have the same effect as if it had been given in the court from which the commission issued.

4 Rand. 585.

1838, p. 71, ch.
92, § 1.

§ 28. A person offering, or intending to offer, to a circuit court a will for probat, may obtain from the clerk of such court process directed to the proper officer of any county or corporation, requiring him to summon any person interested in such probat, to appear at the next term of such court, to shew cause why the said will should not be admitted to record.

§ 29. A circuit court, to which a will is offered for probat, ^{1838, p. 71, ch. 92, § 1.} or into which the question of probat is removed by appeal or otherwise, may cause all persons interested in the probat to be summoned to appear on a certain day.

§ 30. Any person interested in such probat may be summoned, or proceeded against by order of publication; and to any person so interested, who is an infant, or of unsound mind, a guardian *ad litem* may be assigned, as in other cases. ^{Id. See post. ch. 170, § 10, 11, and ch. 171, § 16.}

§ 31. When all the persons interested in such probat shall be properly convened by such summons or order of publication, or assignment of guardian, or shall otherwise appear as parties, the court shall proceed to hear the motion for such probat. ^{1838, p. 71, ch. 92, § 2.}

§ 32. In every such proceeding, the court may require all ^{Id.} testamentary papers of the same decedent to be produced. If any person interested ask it, it shall order a trial by a jury, to ascertain whether any, and if any, which of the papers produced be the will of the decedent, and if no such trial be asked, shall proceed without it to decide the question of probat. The court shall make a sentence or final order as to the probat.

§ 33. In such a proceeding, any such sentence or final order ^{Id. § 3.} shall be a bar to a bill in equity to impeach or establish such will, unless on such a ground as would give to a court of equity jurisdiction over other judgments at law.

§ 34. A court may however, without summoning any party, proceed to probat, and admit the will to record, or reject the same. After a sentence or order, under this section, a person interested, who was not a party to the proceeding, may, within five years, proceed by bill in equity to impeach or establish the will, on which bill a trial by a jury shall be ordered, to ascertain whether any, and if any, how much, of what was so offered for probat be the will of the decedent. If no such bill be filed within that time, the sentence or order shall be forever binding. ^{1 R. C. p. 378, § 13. 1838, p. 72, ch. 92, § 3, 4. 1 H. & M. 74. 4 Rand. 585. 1 Leigh 287. 11 Leigh 498. 1 Rob. 346. 1 Grat. 18. 3 Grat. 555.}

§ 35. The next two preceding sections are subject to this ^{Id.} proviso, that any person interested who, at the time of the sentence or order, is within the age of twenty-one years, may file a bill in equity to impeach or establish the will, within one year after he becomes of age; and any person interested who at that time resides out of this state, or shall have been proceeded against by order of publication, may, unless he actually appeared as a party, or was personally summoned, file such bill within two years after such sentence or order.

§ 36. The record of what is proved or deposed in court by witnesses on the motion to admit a will to record, and any depositions lawfully taken out of court, on such motion, of witnesses who cannot be produced at a trial afterwards before a jury, may, on such trial, be admitted as evidence to have such weight as the jury shall think it deserves. ^{1 R. C. p. 378, § 14. 1838, p. 72, ch. 92, § 5. 1 Grat. 18.}

1 R. C. p. 381,
§ 27.

§ 37. Every will or authenticated copy so admitted to record by any court shall be recorded by the clerk thereof, and remain in the clerk's office, except during such time as the same may be carried to another court under a *subpoena duces tecum*.

CHAPTER CXXIII.

OF DESCENTS AND DISTRIBUTIONS.

SEC.

1. Course of descents generally.
2. To collaterals of half blood.
3. When *per stirpes* or *per capita*.
4. Alienage of ancestor; when not to bar.
5. Illegitimate children, when to take.
6. When marriage legitimates children.
7. Issue legitimate, though marriage be null.
8. Posthumous children to take.
9. Descents from infants in certain cases.

SEC.

10. General course of distribution of personal estate; special provision for wife.
11. Commonwealth's right, if no distributee.
12. When and how widow must renounce benefit of will.
13. Her right as distributee in slaves emancipated.
14. How her right is barred.
15. Advancements brought into hotchpot, of real or personal estate.

*Course of descents.**

1 R. C. p. 355-6,
ch. 96, § 2 to 10.

§ 1. When any person, having title to any real estate of inheritance, shall die intestate as to such estate, it shall descend and pass in parcenary to such of his kindred, male and female, as are not aliens, in the following course:

1. To his children and their descendants.
2. If there be no child, nor the descendants of any child, then to his father.
3. If there be no father, then to his mother, brothers and sisters, and their descendants.
4. If there be no mother, nor brother, nor sister, nor any descendant of either, then one moiety shall go to the paternal, the other to the maternal kindred, in the following course:
 5. First, to the grandfather.
 6. If none, then to the grandmother, uncles and aunts, on the same side, and their descendants.
 7. If none such, then to the great-grandfathers, or great-grandfather if there be but one.
 8. If none, then to the great-grandmothers, or great-grandmother if there be but one, and the brothers and sisters of the grandfathers and grandmothers, and their descendants.

* The act of October 1785, directing the course of descents, is in 12 Hen. Stat. p. 138, ch. 60. As to its history and the rules of the common law abrogated by it, see *Jefferson's Works*, vol. 1, p. 29, 30 and 34, 5, and the opinions of the judges in *Davis v. Rowe* and *others*, 6 Rand. 355. In respect to the real estate of infants, it was modified by certain acts revised in the 9th section of this chapter, and referred to in the cases cited in the margin of that section. The act of 1785 has undergone but little other alteration.

9. And so on, in other cases, without end, passing to the nearest lineal male ancestors, and for want of them, to the nearest lineal female ancestors, in the same degree, and the descendants of such male and female ancestors.

10. If there be no father, mother, brother or sister, nor any descendant of either, nor any paternal kindred, the whole shall go to the maternal kindred; and if there be no maternal kindred, the whole shall go to the paternal kindred. If there be neither maternal nor paternal kindred, the whole shall go to the husband or wife of the intestate; or if the husband or wife be dead, to his or her kindred, in the like course as if such husband or wife had survived the intestate and died entitled to the estate.

§ 2. Collaterals of the half blood shall inherit only half so much as those of the whole blood. But if all the collaterals be of the half blood, the ascending kindred (if any,) shall have double portions. 1 R. C. p. 357, § 15.
5 Call 481.
8 Leigh 368.

§ 3. When the children of the intestate, or his mother, brothers and sisters, or his grandmother, uncles and aunts, or any of his female lineal ancestors living, with the children of his deceased lineal ancestors, male and female, in the same degree, come into the partition, they shall take *per capita*, or by persons; and where, a part of them being dead and a part living, the issue of those dead have right to partition, such issue shall take *per stirpes*, or by stocks, that is to say: the shares of their deceased parents; but whenever those entitled to partition are all in the same degree of kindred to the intestate, they shall take *per capita*, or by persons. 1 R. C. p. 357, § 16.
6 Rand. 355.

§ 4. In making title by descent, it shall be no bar to a party that any ancestor, (whether living or dead,) through whom he derives his descent from the intestate, is or hath been an alien. 11 and 12 Will. iii. ch. 6.
1 R. C. p. 357, § 18.
2 Leigh 109.

§ 5. Bastards shall be capable of inheriting and transmitting inheritance on the part of their mother, as if lawfully begotten. 1 R. C. p. 357, § 18.
4 Leigh 118.
8 Leigh 368.

§ 6. If a man, having had a child or children by a woman, shall afterwards intermarry with her, such child or children, or their descendants, if recognized by him before or after the marriage, shall be deemed legitimate. 1 R. C. p. 357, § 19.
5 Call 439.
3 H. and M. 225.
2 Grat. 203.

§ 7. The issue of marriages deemed null in law, or dissolved by a court, shall nevertheless be legitimate. 1 R. C. p. 357, § 19.
5 Call 143.

§ 8. Any person in *ventre sa mere*, who may be born in ten months after the death of the intestate, shall be capable of taking by inheritance in the same manner as if he were in being at the time of such death. 1 R. C. p. 357, § 13.
1839-40, p. 48, ch. 56, § 1.
5 Call 481.

§ 9. If an infant die without issue, having title to real estate derived by gift, devise or descent from one of his parents, the whole of it shall descend and pass to his kindred on the side of that parent from whom it was so derived, if any such kindred be living at the death of the infant. If there be none such, then it shall descend and pass to his kindred on the side of the other parent. 1 R. C. p. 356, § 11, 12.
2 Call 390, (329.)
3 Call 106, (93.)
1 Munf. 183, 339.
2 Munf. 279.
6 Munf. 281.

Distribution of personal estate.

1 R. C. p. 382,
ch. 104, § 29, 31;
p. 83, ch. 33, § 5.

4 Leigh 163.
5 Leigh 222.

§ 10. When any person shall die intestate as to his personal estate or any part thereof, the surplus, after payment of funeral expenses, charges of administration and debts, shall pass and be distributed to and among the same persons, and in the same proportions, to whom, and in which, real estate is directed to descend, except as follows:

First. Alienage in any person claiming a distributive share of the personal estate, shall be no impediment to his receiving the same share that he would have been entitled to, if he had been a citizen.

Second. The personal estate of an infant shall be distributed as if he were an adult.

3 Rand 434.
5 Leigh 442.

Third. If the intestate was a married woman, her husband shall be entitled to the whole of the said surplus of the personal estate.

Jefferson 37.
6 Call 101.
2 Munf. 501.
5 Munf. 42, 555.
2 Rand 507.

Fourth. If the intestate leave a widow, and issue by her, the widow shall be entitled to one-third of the said surplus, but she shall have only the use for her life of such slaves as may be in her share.

Fifth. If the intestate leave a widow, but no issue by her, the widow shall be entitled absolutely to such of the slaves and other personal property in the said surplus as shall be acquired, after this act takes effect, by the intestate, in virtue of his marriage with her, and remain in kind at his death, including the increase of the slaves, (which shall be subject to such expenses, charges and debts as aforesaid, so far *only** as the other personal estate of the husband may be insufficient for the satisfaction thereof;) she shall also be entitled, if the intestate leave issue by a former marriage, to one-third, if no such issue, to one-half, of the residue of such surplus; but she shall have only the use for her life of such slaves as may be in her said third or half.

See ante, p. 366,
ch. 79, § 2, and p.
496, ch. 113.

§ 11. To the commonwealth shall accrue all the personal estate of every decedent, of which there may be no other distributee.

Widow's renunciation; her right in slaves emancipated; what bars her right as distributee.

1 R. C. p. 381, ch.
104, § 26.

4 Call 92.
5 Call 481.
2 Leigh 419.
4 Leigh 42.
6 Leigh 36.
8 Leigh 400.
12 Leigh 248.

§ 12. When any provision for a wife is made in her husband's will, she may, within one year from the time of the admission of the will to probat, renounce such provision. Such renunciation shall be made either in person before the court in which the will is recorded, or by a writing proved as to her in such court by two witnesses, and recorded therein. If such renunciation be made, or if no provision for her be made

* The word *only* was in the amendment made by the house, (see p. 4 of house amendments to 3d report of revisors) but it was omitted in engrossing the bill and the roll is like the engrossed bill.

in the will, she shall have such share of her husband's personal estate as she would have had if he had died intestate; otherwise she shall have no more thereof than is given her by the will.

§ 13. The widow, except where other provision is made by the will and not renounced, shall be entitled to her share of the slaves belonging to her husband at the time of his death, even though they may be set free by his will. And where a part only of the slaves are set free, the widow's share shall be taken out of those which are not set free, if they be enough. If any part of the slaves, so set free, be required for the widow's share, all of them shall be hired out, and the hire paid to her, until she is compensated for her share or the deficiency thereof. But where the personal estate of the husband, other than slaves set free by him, is sufficient to do so, the personal representative of the husband shall pay her thereout such sum as is equal to the value of her life estate in any such slaves. 1 R. C. p. 435, ch. 111, § 60.

§ 14. The foregoing provisions in favour of the wife are all subject to this qualification, that if she of her own free will leave her husband, and live in adultery, she shall have no part of the personal estate as to which he dies intestate, unless her husband, after she so left him, was reconciled to her, and suffered her to live with him.

Advancements to be brought into hotchpot.

§ 15. Where any descendant of a person dying intestate as to his estate or any part thereof, shall have received from such intestate in his lifetime, or under his will, any estate, real or personal, by way of advancement, and he or any descendant of his shall come into the partition and distribution of the estate with the other parceners and distributees, such advancement shall be brought into hotchpot with the whole estate, real and personal, descended or distributable, and thereupon such party shall be entitled to his proper portion of the estate, real and personal. 1 R. C. p. 257, § 17; p. 382, § 30.
1 Wash. 224.
3 Rand. 120, 559.
4 Rand. 568.
3 Leigh 30.
4 Grat. 348.

Title 34.

CHAPTER CXXIV.

PARTITIONS AND COTERMINOUS OWNERS.

SEC.	SEC.
1. Jurisdiction in cases of partition of land.	6. Partition of slaves, &c. by sale, if necessary.
2. When equal partition cannot be made, proceedings thereupon.	7. Working coal mines near land of others prohibited, without consent of owner.
3. } When shares of two or more laid off together; as to shares of unknown parties.	8. Such owner bound to permit survey of the mine.
4. }	
5. Lessee of land divided, how to hold after partition.	

SEC.		SEC.	
9.	How entry for such purpose compelled.	13.	Proceedings to acquire right to drain land through the land of others.
10.	Protection of owners of adjoining fishing shores.	14.	
11.		15.	What the jury to find; damages to be paid or secured.
12.		16.	

Partition of lands.

1 R. C. p. 359, ch. 98, § 1, 4, 6, 7.
1830-31, p. 99, ch. 31, § 1, 6.
6 Munf. 534.
3 Rand. 361, 598.
4 Rand. 74, 493.
7 Leigh 720.
2 Grat. 340.

§ 1. Tenants in common, joint tenants, and coparceners, shall be compellable to make partition, and the court of equity of the county or corporation, wherein the estate or any part thereof may be, shall have jurisdiction in cases of partition, and in the exercise of such jurisdiction may take cognizance of all questions of law affecting the legal title, that may arise in any proceeding.

1 R. C. p. 358, ch. 96, § 20.
1827-8, p. 26, ch. 34, § 2.
1828-9, p. 24, ch. 19, § 1, 2.

§ 2. When partition cannot be conveniently made, the entire subject may be allotted to any party who will accept the same and pay therefor to the other parties such sums of money as their interest therein may entitle them to receive; or if the interest of the parties will be promoted by a sale of the entire subject, or allotment of part and sale of the residue, the court may order such sale and allotment, and make distribution amongst them of the proceeds of sale, according to their respective rights; but if in any suit for a partition, in a county or corporation court, a sale of the real estate, or part thereof, be proper, and the dividend of any party, in the opinion of the court, exceed the value of three hundred dollars, the case before any decree for sale therein, shall, by the order of the said court, be removed to the circuit court of the county or corporation having jurisdiction of chancery cases.

§ 3. Any two or more of the parties, if they so elect, may have their shares laid off together.

1830-31, p. 99, § 1.

§ 4. If the name or share of any person, interested in the subject of the partition, be unknown, so much as is known, in relation thereto, shall be stated in the bill.

1 R. C. p. 361, § 8.

§ 5. Any person who before the partition or sale was lessee of any of the lands divided or sold, shall hold the same of him to whom such land is allotted or sold, on the same terms on which by his lease he held it before the partition.

Partition of slaves or other chattels.

1 R. C. p. 432, § 50.
3 Call 13.
4 Rand. 95.

§ 6. When an equal division of slaves, goods, or chattels, cannot be made in kind among those entitled, a court of equity may direct the sale of the same and the distribution of the proceeds according to the rights of the parties.

Rights of coterminous owners of land.

1833-4, p. 82, ch. 70, § 1.

§ 7. No owner or tenant of any land containing coal, east of the *Blue Ridge* of mountains, shall open or sink or dig, excavate or work, in any coal mine or shaft, on such land, within twenty-five feet of the line dividing said land from that of another person or persons, without the consent, in writing, of every

person interested in or having title to such adjoining lands in possession, reversion or remainder, or of the guardians of any such persons as may be infants. If any person shall violate this section, he shall forfeit five hundred dollars to any person who may sue for the same.

§ 8. The owner, tenant or occupant of any land on which a coal mine is opened and worked, or his agent, shall permit any person interested in or having title to any land coterminous with that in which such coal mine is, to have ingress and egress with surveyors and assistants to explore and survey such mine at his own expense, and not oftener than once a month, for the purpose of ascertaining whether or not the preceding section has been violated. Every owner, tenant, occupant or agent, who shall refuse such permission, exploration or survey, shall forfeit twenty dollars for each refusal to the person so refused. 1833-4, p. 82, ch. 70.

§ 9. Any justice of the county in which such mine is, before whom complaint of such refusal is made, may issue a summons to such owner, tenant, occupant or agent, to answer such complaint. On the return of the summons executed, and proof that the complainant has right of entry, and that it has been refused without sufficient cause, the justice shall designate an early and convenient time for such entry to be made, and issue his warrant, commanding the sheriff of the county to attend and prevent obstructions and impediments to such entry, exploration and survey. The costs of such summons, and a fee of three dollars to the sheriff executing the warrant, shall be paid by the person whose refusal caused the complaint. But if the justice dismiss the complaint, the costs shall be paid by the party making it. Id.

Owners of adjoining fishing shores.

§ 10. On the application of any proprietor or occupant of a fishing shore, the court of the county, in which such fishing shore may be, (on proof that notice thereof had been given to the proprietor or occupant of each adjoining shore,) may appoint three commissioners, to designate the ebb and flood hauls of the said adjoining fishing shores, and report their proceedings to the court. 1838, p. 88, ch. 118, § 1. 1840-41, p. 90, ch. 80.

§ 11. After their report is confirmed by the court, if any person shall lay out a seine from either shore, so as to interfere with the haul of the said adjoining shore, as so designated, he shall forfeit fifty dollars. Id.

§ 12. If the person so offending be not a resident of this state, any justice, on complaint to him on oath, shall issue his warrant to bring such offender before him, or some other justice, who may, after hearing evidence, require him to enter into a recognizance, to appear at the next quarterly term of the court of the county where the offence was committed, to answer an indictment therefor. 1838, p. 88, ch. 118, § 2.

Draining lands through lands of others.

1847-8, p. 83, ch. 110, § 1. § 13. Any person desiring to drain his lands through the lands of others, may apply to the court of the county or corporation in which a part of the last mentioned lands may lie, for a writ, in the nature of a writ of *ad quod damnum*, of which application notice shall be given to the proprietors of the lands through which such drain is to be, in the manner prescribed by the second section of chapter sixty-three.

Ante, p. 328, ch. 63, § 2.

1847-8, p. 83, ch. 110, § 1. § 14. If the court, on hearing the matter, think it proper, it shall issue the writ accordingly, directed to the sheriff of the same county, who shall execute it in the same manner, and like proceedings shall be had thereupon, as are prescribed in the third, fourth, fifth and sixth sections of said chapter sixty-three, so far as the same is applicable.

Ante, p. 328-9, ch. 63, § 3, 4, 5, 6.

1847-8, p. 83, ch. 110, § 1. § 15. The jury shall also enquire and say, whether the mode of draining his land, proposed by the applicant, be proper, and shall describe the same specifically.

Id. § 2. § 16. If the leave prayed for be granted, the applicant shall, before he proceed therein, pay, or secure to the satisfaction of the parties entitled thereto, the compensation ascertained by the jury, and all the costs of the inquest, and shall make and keep open such cut, drain or culvert, as he is allowed to make, at his own expense.

Title 35.

MINORS ; AND THEIR MASTERS OR GUARDIANS.

- CHAP. 125. Of the maintenance of illegitimate children.
 126. Of masters and apprentices.
 127. Of guardians and wards.

CHAPTER CXXV.

OF THE MAINTENANCE OF ILLEGITIMATE CHILDREN.

- | | | | |
|------|--|------|---|
| SEC. | | SEC. | |
| 1. } | How the father may be charged ; | 5. } | Bond of father to support child ; |
| 2. } | recognizance given. | 6. } | how enforced. |
| 3. | Proceedings on accusation. | 7. | Attorney for commonwealth to appear for woman or overseers. |
| 4. | The woman, a witness ; the man heard also. | | |

2 R. C. p. 272, 3, ch. 239, § 31, 33.

§ 1. Any unmarried white woman may go before a justice of the county or corporation in which she has resided for the next preceding year, and accuse any free person of being the father of a bastard child of which she has been delivered.

The said justice shall examine her under oath, and reduce her statement to writing and sign it. On such examination, unless the child appear to be seven years old, a warrant may be issued, requiring the person so accused to be apprehended and brought before a justice of the county or corporation in which he may be found, who shall require him to enter into a recognizance, with one or more sufficient sureties, in not less than fifty, nor more than two hundred dollars, with condition to appear at the next court for the county or corporation in which the warrant issued, and to abide the order of the court.

§ 2. Should the court continue the case at the first, or any subsequent term, the recognizance shall continue in force until final judgment, unless the accused, if a new recognizance be required, shall give the same, or be committed to jail.

§ 3. After such accusation shall have been made, proceedings thereupon may be had either at the instance of the woman, or of an overseer of the poor.

§ 4. At the hearing, the woman shall be a competent witness, unless she shall have been convicted of any crime which would render her incompetent in another cause. And if the party accused desire it, he may be examined on oath, and his statement be weighed along with hers.

§ 5. If the court shall adjudge the accused to be the father of such bastard child, it shall order him to pay to the overseers of the poor of the county or corporation, for the maintenance of the said child, such sums, as it may deem proper, for each year, until such time as the court may appoint, unless it sooner die. The court shall order the father to give a bond in such penalty and with such sureties, as it may deem sufficient, for the performance of the said order; and shall order him to jail until such bond be given in court, or filed in the clerk's office, or the woman and the said overseers consent to his discharge, or he be otherwise legally discharged.

§ 6. As often as the condition of such bond is broken, a motion may be made before the court of the county or corporation, and judgment may be given in the name of the said overseers against the said father and his sureties, and against his and their personal representatives, for the money due, with lawful interest thereon from the time or times when the same ought to have been paid.

§ 7. The attorney for the county or corporation shall appear on behalf of the woman, or of the overseers of the poor, in every case under this chapter.

CHAPTER CXXVI.

MASTERS AND APPRENTICES.

SEC.

1. } How minors are bound out.
2. }
3. }
4. Term of apprenticeship.
5. Writing executed by master; his duty.
6. What is to be required of him by court binding out minor.
7. When and where writing and bond of master filed.
8. How apprentice may be transferred to new master.

SEC.

9. } Of the money the master is to pay ;
10. } to whom it is to be paid.
11. How it may be recovered.
12. Complaint of master or apprentice against the other, how tried, &c.
13. Where apprentice resides out of county or corporation in which writing is filed.
14. As to apprentices bound out of the state.
15. } Apprentices who desert, liable to
16. } master; harbouring them punished.

How a minor is bound ; for what term ; of the writing executed by the master ; and his duties.

1 R. C. p. 411,
ch. 108, § 27.
1 H. and M. 413.
4 Leigh 493.
5 Grat. 285.

§ 1. Any minor may be bound as an apprentice by his guardian, or if none, by his father, or if neither father nor guardian, by his mother, with the consent entered of record of the court of the county or corporation in which the minor resides ; or without such consent, if the minor, being fourteen years of age, agree in writing to be so bound.

1845-6, p. 116, ch.
153, § 2.
1810-11, p. 86, ch.
52.

§ 2. By the same authority and under the same limitations, any minor may be placed for such time, as may be agreed on in writing, in any incorporated association, asylum or school, instituted for the support and education of destitute children, which shall thereupon be entitled to the custody of such minor for such time, and may bind him an apprentice until the expiration of that time.

1 R. C. p. 410,
§ 25.
2 R. C. p. 269,
§ 14, 15, 16 ; p.
274, § 35.
1839, p. 52, § 3.
5 Grat. 285.

§ 3. Any overseer of the poor of a county or corporation, if allowed by an order of the court thereof, may place in any such incorporated institution, or bind out as an apprentice, any minor who is found begging in such county or corporation, or is likely to become chargeable thereto.

1 R. C. p. 410,
§ 25 ; p. 411, § 27.

§ 4. The term of every such apprenticeship shall be until the apprentice attains the age of twenty-one years, if a boy, or eighteen years, if a girl.

Id. § 25.

6 Leigh 560.

§ 5. The writing by which any minor is bound an apprentice, shall specify his age, and what art, trade or business he is to be taught. The master, whether it is expressly provided therein or not, shall be bound to teach the same, and unless the apprentice be a free negro, shall be bound to teach him reading, writing and common arithmetic, including the rule of three.*

1 R. C. p. 410,
§ 25, 26.

§ 6. When a court makes an order allowing a minor to be bound as an apprentice, it shall enquire and direct whether

* As to master's obligation to pay for medical attendance on apprentice, see 4 Rand. 423.

the master, besides maintaining the apprentice and so teaching him, shall pay anything for his services, and if anything, how much, and for which year or years: the writing by which the minor is bound, shall bind the master to pay what may be so directed. For such payment bond shall be taken by the overseers binding such minor, if the court require it.

§ 7. The writing by which any minor is bound, and any bond taken from the master, shall, within six months from the date thereof, be filed in the clerk's office of the court of the county or corporation in which the same may be executed. Unless so filed, the master shall not be entitled to the services of the apprentice.

§ 8. Such writing may, with the approbation of the said court, and on such terms as the court may prescribe, be transferred by the master, or, within three months after his death, by his personal representative. The assignee thereof shall succeed to the master's rights and obligations for the future, and shall give bond if required by the court.

Of the money the master is to pay.

§ 9. The money which the master is to pay for any year except the last, shall, at the end of the year for which it is payable, be paid to the father of the minor, or the mother, or part to each, as the court may direct: Or it may be reserved, to be paid to the apprentice at the end of his term, with interest. Such directions may be changed from time to time, on the motion of the overseers of the poor, or of the father, mother or apprentice, on proof of notice of such motion having been given to the adverse party.

§ 10. The money which the master is to pay for the last year, shall be paid at the end thereof to the apprentice.

§ 11. Any money to be paid under either of the two preceding sections, may be recovered from those liable therefor, on the motion of the person entitled thereto, or by suit. Any such motion may be in that court, in the office whereof the writing or bond of the master is filed.

Controversies between masters and apprentices.

§ 12. Such court, during the term of apprenticeship, may receive the complaint of such apprentice, or any person in his behalf, against the master, for undeserved or excessive correction, want of instruction, insufficient allowance of food, raiment or lodging, or nonpayment of what was directed to be paid; or the complaint of a master against his apprentice for desertion or other misconduct; and after reasonable notice of the complaint to the party against whom it is made, may determine the same in a summary way, making such order as the case may require.

§ 13. No apprentice shall reside out of that county or corporation, in the office whereof the writing whereby such apprentice is bound is required to be filed, without the leave of the court of such county or corporation. Whenever such leave is given, a copy of the said writing shall be forthwith filed in the office of the court of that county or corporation wherein the residence is to be; and thereafter, that court may hear and determine any complaint against the said master or apprentice, as might have been done by the court giving such leave, before the same was given. If, without such leave, an apprentice be removed by his master, or with his master's knowledge, out of the first mentioned county or corporation, and remain there-out more than one month, the obligation of the apprentice to serve such master shall be only during the pleasure of the apprentice.

1 R. C. p. 411,
§ 28.

§ 14. If any apprentice, who was bound as such beyond the limits of this state, be brought or come within the same, the court of the county or corporation, in which he may be, may hear and determine in a summary way any complaint of him or his master, and make such order in the matter as may be right.

Apprentices who desert their service.

Id. § 29

§ 15. If an apprentice, bound in this state, desert the service of his master, he shall be liable to the master, notwithstanding his infancy, for all damages sustained by such desertion.

Id. § 30.

§ 16. If any person shall, knowingly, conceal or harbour any such apprentice, he shall pay such master three dollars for each day he shall so conceal and harbour the apprentice, in addition to the damages sustained by the master.

CHAPTER CXXVII.

OF GUARDIANS AND WARDS.

Sec.

1. } Testamentary guardians; when to
2. } qualify.
3. } How courts appoint guardians.
4. }
5. } Guardians to give bond; court lia-
6. } ble if not given, and with good
7. } security.
8. } When court may appoint curator;
9. } his duties, &c.
10. } Guardian to have custody and care
11. } of ward and his estate; proviso as
12. }

Sec.

1. } to custody of person; continu-
2. } ance of trust; to account for estate
3. } at end thereof.
4. } Disbursements allowed guardian;
5. } when may be beyond income,
6. } and property sold therefor.
7. } When guardian to pay compound
8. } interest.
9. } Power of chancery court over
10. } guardians; and how infants may
11. } sue.
12. }

Appointment of guardians.

§ 1. Every father may, by his last will and testament, appoint a guardian for his child, born or to be born, and for such time, during its infancy, as he shall direct. 1 R. C. p. 405, ch. 108, § 1.
11 Leigh 414.

§ 2. If any person, so appointed, shall renounce the trust, or fail to appear in the court in which the said will shall be proved, within six months after the probat thereof, and declare his acceptance of the trust, and give bond as hereafter provided, such appointment shall be void. 1 R. C. p. 406, ch. 108, § 3.

§ 3. The circuit, county or corporation court of any county or corporation in which any minor resides, or, if he be resident out of the state, in which he has any estate, may appoint a guardian for him, unless he have a guardian appointed as aforesaid by his father. 1 R. C. p. 406, ch. 108, § 3, 4.
1824-5, p. 14, ch. 9, § 3.

§ 4. If the minor is under the age of fourteen years, the court may nominate and appoint his guardian; if he is above that age, he may, in the presence of the court, or, in writing, acknowledged before a justice, nominate his own guardian, who, if approved by the court, shall be appointed accordingly; and if the guardian, nominated by such minor, shall not be appointed by the court, or if the minor shall reside without the state, or if, after being summoned by the court, he shall neglect to nominate a suitable person, the court may nominate and appoint the guardian in the same manner as if the minor was under the age of fourteen years.

§ 5. Every guardian, unless in the case of a testamentary guardian the will otherwise directs and the court in such case deems it unnecessary for the safety of the ward, shall give bond, to be approved by the court by which he is appointed, or in which he accepts the trust, in such penalty as shall be prescribed by the court. If any court omit to require such a bond, or accept such person as surety or sureties as do not satisfy it of their sufficiency, the judge or justices so in default shall, jointly and severally, be liable to the ward for any damages he may sustain thereby. 1 R. C. p. 406, § 5.
See ante, p. 88, ch. 13, § 8.
1 Call 333.
3 Leigh 12.
2 Munf. 492.
1 Grat. 310.

§ 6. Until a guardian shall have given bond, the court may, from time to time, appoint a curator, who shall give bond as aforesaid, and, during the continuance of his trust, have all the powers and perform all the duties of a guardian, and be responsible in the same way; but the court, in its discretion, may dispense with his giving security. 1 R. C. p. 407, § 6.

Powers and duties of guardians.

§ 7. Every guardian who shall be appointed as aforesaid, and give bond when it is required, shall have the custody of his ward, and the possession, care and management of his estate, real and personal, and out of the proceeds of such estate shall provide for his maintenance and education. But the father of the minor, if living, and in case of his death, the mother, Id. p. 405, § 1.
1 Wash. 90.
4 Call 250.
6 Rand. 556.
6 Leigh 399.

while she remains unmarried, shall, if fit for the trust, be entitled to the custody of the person of the minor, and to the care of his education. And unless the guardian shall sooner die, be removed, or resign his trust, (which the court that appointed him may allow him to do,) he shall continue in office until the minor, being a male, shall attain the age of twenty-one years, or being a female, shall attain that age or marry, or in the case of a testamentary guardianship, until the termination of the period limited therefor. At the expiration of his trust, he shall deliver and pay all the estate and money in his hands, or with which he is chargeable, to those entitled thereto.

7 Leigh 366.

1 R. C. p. 407,
§ 9, 26.
1 Munf. 119.
6 Rand. 444.
3 Leigh 12
7 Leigh 412.
11 Leigh 139.
1 Grat. 143.

§ 8. No disbursements shall be allowed to any guardian, where the deed or will, under which the estate is derived, does not authorize it, beyond the annual income of the ward's estate, except in the following cases:

First, when the ward is of such tender years or infirm health that he cannot be bound out as an apprentice, or no suitable person will take him as such: or,

Secondly, when although old enough to be bound out as an apprentice, it shall be deemed best for the ward that the principal of his personal estate, or a portion thereof, should be applied towards his education and maintenance, and the court before which the accounts of the guardian may be settled shall be satisfied that such expenditure was actually made, and was judicious and proper, and shall allow the same.

Id.

§ 9. When any such disbursements shall be so allowed, the court shall, if necessary, order the sale of such portion of the personal estate of said ward as may be necessary to pay the balance of such expenditures over and above the income of his estate, and may sanction any sale previously made, which, if it had not been so made, the court at the time of allowing such disbursements would have ordered; but neither the ward personally, nor his real estate, shall be liable for such disbursements.

1 Munf. 119.
1 Rob. 196.

§ 10. If any balance, whether of profits received or estimated, or of interest or principal, be due by any guardian, or other person acting as guardian, at the end of any year, which ought to be invested or loaned out within a reasonable time for the benefit of the ward, and the same remain in the hands of such guardian or other person, he shall be charged with interest thereon from the end of the year in which such balance arose, and so on *toties quoties* during the continuance of the trust.

Power of chancery courts, and how infants may sue.

1 R. C. p. 406, § 4.

2 Wash. 195.

§ 11. The circuit, county and corporation courts in chancery may hear and determine all matters between guardians and their wards, require settlements of the guardianship accounts, remove any guardian for neglect or breach of trust, and ap-

point another in his stead, and make any orders for the custody and tuition of an infant and the management and preservation of his estate.

§ 12. Any minor, entitled to sue, may do so by his next friend. 1 R. C. p. 410, § 32.

6 Munf. 280.
1 Rand. 131.

Title 36.

LEASING AND SELLING LANDS OF PERSONS UNDER DISABILITY.

CHAPTER CXXVIII.

OF LEASING THE LANDS OF INFANTS OR INSANE PERSONS,
AND OF THE SALE OF THEIR LANDS OR THOSE HELD FOR
CESTUIS QUE TRUST.

SEC.

1. How leases on behalf of persons under disability may be made.
2. By whom bill may be filed for sale of lands of such persons, or lands held in trust; what to state and how verified.
3. } Guardian *ad litem* appointed. How
4. } depositions to be taken.
5. When and what decree for sale may be made.
6. Guardian, committee or trustee not to purchase at sale.

SEC.

7. } How proceeds of sale to be se-
8. } cured and applied.
9. } Provision for the wife of infant or
10. } insane husband whose real es-
11. } tate is so sold.
11. How dower right of an insane wife may be passed.
12. When proceeds of sale to pass as real estate.

§ 1. Where an infant, insane person or married woman is entitled to or bound to renew any lease, any person on his or her behalf, or any person interested, may apply by petition, or motion in a summary way, to the circuit court of the county or corporation in which the land leased, or some part thereof, may lie, and by the order of the said court, any person appointed by it may, from time to time, surrender or accept a surrender of such lease, or take, or make a new lease of the same premises, for such term and with such provisions as the court shall direct. Such reasonable sums as may be incurred to renew any such lease, shall, with interest thereon, be paid out of the profits of the leasehold premises, and be a charge thereon till such payment. 1 R. C. p. 408, ch. 108, § 14.
1840-41, p. 48, § 45.

§ 2. If the guardian of any minor, or the committee of any insane person, think that the interest of the ward or insane person will be promoted by a sale of his real estate, or real estate in which he is interested with others, infants or adults, or if the trustee of any real estate, or any person interested in such real estate in trust, think the interest of those for whom 1 Will. iv, ch. 65, § 12, 13, 14, 15, 17, 19, 20, 21, 23, 24, 31.
1 R. C. p. 409, § 16; p. 417, ch. 109, § 22.
1831-2, p. 57, ch. 70, § 1.
1826-7, p. 18, ch. 19, § 2.
1827-8, p. 26, ch. 34, § 1.
10 Leigh 406.

the estate is held will be promoted by a sale thereof, such guardian, committee, trustee or beneficiary may file a bill in equity, for that purpose, in the circuit court of the county or corporation in which the land proposed to be sold, or some part thereof, may lie, stating plainly all the estate, real and personal, belonging to such infant or insane person, or so held in trust, and all the facts calculated to shew the propriety of the sale. The bill shall be verified by the oath of the plaintiff; and the infant or insane person, or the beneficiaries in said trust, and the trustee (when not plaintiffs) and all others interested, shall be made defendants, and also, where there is an infant or insane defendant, all those who would be his heirs if he were dead.

1 R. C. p. 409,
§ 16, 17; p. 417,
§ 22.
1831-2, p. 57, § 1.

§ 3. To every such infant or insane defendant there shall be appointed a guardian *ad litem*, who, as well as the infant, (if over fourteen years of age,) shall answer the bill on oath in proper person.

1 R. C. p. 409,
417 § 18, 22.
1831-2, p. 57, § 3.

§ 4. No deposition shall be read in the suit against any infant or insane party, unless it be taken in the presence of the guardian *ad litem*, or upon interrogatories agreed on by him.

1 R. C. p. 409,
§ 17, 19, 23.
1831-2, p. 57, § 2,
4.

§ 5. If it be clearly shewn, independently of any admissions in the answers, that the interest of the infant, insane person or beneficiaries in the trust, as the case may be, will be promoted, and the court is of opinion that the rights of no person will be violated thereby, it may decree a sale of said real estate, or any part thereof, retaining a lien thereon for the purchase money, where the sale is on credit.

1 Rand. 396.
10 Leigh 407.

1 R. C. p. 410,
§ 23.
1831-2, p. 58, § 7,
8.

§ 6. At such sale the guardian, or guardian *ad litem*, or committee, or trustee, shall not be a purchaser directly or indirectly.

1 R. C. p. 409,
§ 20.
1831-2, p. 58, § 5.

§ 7. The proceeds of sale shall be invested under the direction of the court, for the use and benefit of the persons entitled to the estate; and in the case of a trust estate, subject to the uses, limitations and conditions contained in the writing creating the trust. But into whosoever hands the said proceeds may be placed, the court shall require ample security, and make all proper orders from time to time, for the faithful application of the same, and for the management and preservation of any property or securities in which the same may be invested.

1827-8, p. 26, § 4.

§ 8. Whenever, in any such suit, it may appear to be the interest of an infant to have his land sold for the payment of debts due by his ancestor or devisor, so as to exempt the slaves of the decedent, the court may order the proceeds of such sale to be so applied, or to be invested in the purchase for such infant of such slaves.

1848-9, p. 53,
ch. 101.

Ante, p. 394,
ch. 85.

§ 9. When a decree or order is made under this chapter, or the eighty-fifth chapter, for the sale of real estate of an insane or infant husband, his wife may, if she thinks fit, join in the conveyance, and thereby release her right of dower, or sell and convey all her estate and interest in the granted pre-

mises, in like manner as she might have done by a conveyance thereof, made jointly with the husband if he had been under no legal disability.

§ 10. In case of any such release by the wife of her right of dower, or of any such conveyance of her own estate, the proceeds of the sale shall be so invested and disposed of under the order of the court directing the sale, as to secure to her the same right, use and benefit of, and in, the principal sum and the income thereof, that she would have had of, and in, the real estate and the income thereof, if it had not been sold; or if she prefer it, she may receive or have secured to her, out of the said proceeds, such sum in gross as in the opinion of the court may be sufficient to compensate her for her interest in the said real estate.

§ 11. If the husband of an insane wife wish to sell real estate, and to have her right of dower therein released to the purchaser, he may petition for that purpose the circuit court of the county or corporation in which such estate or some part thereof is. And if it appear to the court to be proper, an order may be made for the execution of such a release by a commissioner, to be appointed by the court for the purpose, which release shall be effectual to pass her said right of dower to the purchaser. But the court shall make such order, as in its opinion may be proper, to secure to her the same interest in the purchase money and the income thereof, that she would have had in the real estate and income thereof if it had not been sold; or at the discretion of the court, to secure to her out of the purchase money such sum in gross, as in the court's opinion may be sufficient to compensate her for right of dower.

§ 12. What may be received under this or the one hundred and twenty-fourth chapter for the real estate of an infant, or insane person, sold or divided, or so much thereof as may remain at his death intestate, shall, if he continue till his death incapable of making a will, pass to those who would have been entitled to the land if it had not been so sold or divided.

1848-9, p. 53, ch. 101.

Ante, p. 394, ch. 85.

Id.

1 R. C. p. 410,

§ 21; p. 418,

§ 22.

1827-8, p. 26, § 5.

1828-9, p. 24, ch.

19, § 3.

1831-2, p. 209, § 6.

Ante, p. 526, ch.

124.

Title 37.

TRANSFERRING TO PERSONS IN ANOTHER STATE
EFFECTS IN THIS.

CHAPTER CXXIX.

OF THE TRANSFER OF PROPERTY IN THIS STATE BELONGING
TO DECEDENTS, WARDS, INSANE PERSONS, OR CESTUIS QUE
TRUSTS, IN ANOTHER STATE OR COUNTRY.

SEC.

1. Transfer of property of a decedent.
2. } Transfer of property of infant or
3. } insane person.
4. } Transfer of property of cestui que
6. } trust.

SEC.

5. Sale of property of ward, insane person or cestui que trust, may be ordered, and proceeds transferred.
7. Resident guardian, &c., protected by such decree.

1838, p. 26, ch.
12, § 7.
1846-7, p. 78, ch.
91; p. 83, ch. 94,
§ 3.

§ 1. A certificate of debt of this state or of a corporation created by it, or stock in such corporation, standing on the books of the state or corporation in the name of a person who was domiciled at his death out of this state, and has no personal representative qualified as such within the same, may, by his personal representative, qualified according to the laws of his domicil, be transferred as follows: Such representative may give notice, by publication once a week for two months in a newspaper published in the state or country in which he qualified, and in two newspapers published at the seat of government of this state, that he will move the circuit court of the county or corporation in which the said books of the state or corporation are kept, to direct a transfer of such certificate or stock, and upon his producing to the said court evidence of such notice having been so published, and evidence also that he is the personal representative according to the laws of the domicil, the said court, after the expiration of two months from the last publication of such notice, may, on such motion, without any bill or other pleading, make an order that, upon the original certificate of such debt or stock being filed with the proper officer of the state or corporation, the same shall be transferred as may be directed by the said representative; and by virtue of such order, a valid transfer thereof may be made on the books of the state or such corporation by the said representative in person or by attorney, unless, before such transfer be actually made, a notice in writing, forbidding the same, be served on such officer; in which last mentioned case the transfer shall only be made as would have been lawful, if this section had not been enacted.

1841-2, p. 55,
ch. 99.

§ 2. When any minor or insane person, entitled to property or money in this state, resides out of it, on the petition of a guardian or committee, lawfully appointed and qualified in the

state or country of his residence, the circuit court of the county or corporation in which the estate may be, may order the guardian or committee in this state, if there be one, to pay and deliver to such foreign guardian or committee, or his agent or attorney, all personal property and money in his hands, belonging to said ward or insane person, and authorize such foreign guardian or committee to sue for, recover and receive all money or personal property, which may belong to his ward or insane person, including the accruing rents of his real estate, in like manner as if he were appointed a guardian or committee of such ward or insane person in this state, and remove the same to the state or country in which the said foreign guardian or committee was appointed and qualified.

§ 3. No such order shall be made until notice of the application shall have been published once a week for four successive weeks in a newspaper: ^{1841-3, p. 55, ch. 99.}

Nor until it shall be shewn, by authentic documentary evidence, that such foreign guardian or committee has, where he qualified, given bond with surety, sufficient to ensure his accountability for the whole amount of the ward's or insane person's estate in his hands, or which will probably be received by him, as such guardian or committee:

Nor until the court shall be satisfied that the removal of such money or property from this state will not impair the rights, or be prejudicial to the interests, either of the ward or insane person, or of any other person.

§ 4. When any personal estate in this state is vested in a trustee resident therein, and those having the beneficial interest in the said estate are non-residents of this state, the circuit court of the county or corporation, in which the said trustee may reside, may, on a petition or bill in equity, filed for that purpose, order him, or his personal representative, to pay, transfer and deliver the said estate, or any part of it, to a non-resident trustee, appointed by some court of record in the state in which the said beneficiaries reside. ^{1845-6, p. 61, ch. 82.}

§ 5. If, in any proceeding under the second or fourth sections of this chapter, it shall appear to the court to be proper, it may order the property, or any part of it, to be sold, and the proceeds to be paid to the foreign guardian or committee, or non-resident trustee.

§ 6. No such order* shall be made in the case of a petition, ^{1a.} until notice of the application shall have been given to all persons interested in such trust estate: *Nor* until the court shall be satisfied, by authentic documentary evidence, that the non-resident trustee, appointed as aforesaid, has given bond, with sufficient security, for the faithful execution of the trust: *Nor* until it is satisfied that the payment and removal of such estate out of

* This section, as reported by the revisors, (p. 663 of their reports,) followed immediately after the 4th section. In the house of delegates the chapter was amended, by inserting the 5th section.

this state will not prejudice the rights of any person interested, or to become interested therein.

1845-6, p. 61, ch.
82.

§ 7. When any guardian or committee, trustee or other person, in this state, shall pay over, transfer or deliver any estate in his hands, or vested in him, under any order or decree, made in pursuance of this chapter, he shall be discharged from all responsibility therefor.

Title 38.

PERSONAL REPRESENTATIVES; SALE OF REAL ESTATE OF DECEDENTS; AND APPLICATION OF ASSETS.

CHAP. 130. Of personal representatives; their powers and duties as to personal assets.

131. Duties of personal representatives as to real estate; and the liability of such estate for decedent's debts.

CHAPTER CXXX.

OF PERSONAL REPRESENTATIVES; THEIR POWERS AND DUTIES AS TO PERSONAL ASSETS.

SEC.		SEC.	
1.	What executor may do before qualification.	11.	As to probat or letters of administration in due form; when made out.
2.	When administration is granted, with will annexed.	12.	Appraisement of estate; its effect.
3.	Oath of executor, or such administrator.	13.	Appointment of debtor executor does not extinguish debt.
4.	What court to appoint administrator of intestate; who to be preferred; administrator's oath; when grant ceases.	14.	What estate personal representative shall sell, and what not; when not to sell slaves.
5.		17.	
6.	Bond of executor or administrator; in what penalty; when no bond to be given.	18.	An estate for another's life to be assets.
7.		19.	Suits by or against personal representative on judgments or contracts, for carrying away goods, or for waste.
8.	Executor of executor to have no authority over estate of first testator; court to grant administration thereof.	20.	
9.	Female personal representative marrying, her authority as such extinguished.	21.	
10.	When estate committed to sheriff or other officer to be administered without new oath or bond; court may revoke the order, and appoint other representative.	22.	When administrator <i>de bonis non</i> may have <i>scire facias</i> .
		23.	When suit may be brought on bond of representative.
		24.	Representative and sureties not chargeable beyond assets; as to pleadings in actions against them.
		25.	Order in which debts shall be paid. When representative not liable for paying debt of inferior dignity.
		26.	

Powers before qualifying; their qualification and bonds; and the probat or letters of administration.

1 R. C. p. 379, ch.
104, § 17, 23.

§ 1. A person appointed by a will executor thereof, shall not have the powers of executor until he qualifies as such, by

taking an oath and giving bond in the court in which the will or an authenticated copy thereof is admitted to record; except that he may provide for the burial of the testator, pay reasonable funeral expenses, and preserve the estate from waste.

1824-5, p. 10, ch. 8, § 1.
3 Call 75.
4 Munf. 194.

§ 2. If there be no executor appointed by the will, or if all the executors therein named refuse the executorship, or fail, when required, to give such bond, which shall amount to such refusal, the said court may grant administration with the will annexed to the person who would have been entitled to administration if there had been no will; he taking such oath and giving such bond.

1 R. C. p. 379, ch. 104, § 17, 20
1 Rand. 168.
7 Leigh 419.

§ 3. The oath of an executor, or of an administrator with the will annexed, shall be that the writing admitted to record contains the true last will of the deceased, as far as he knows or believes, and that he will faithfully perform the duties of his office to the best of his judgment.

1 R. C. p. 379, ch. 104, § 21.
1824-5 p. 10, ch. 8, § 1.

§ 4. In the case of a person dying intestate, the jurisdiction to hear and determine the right of administration of his estate shall be in the same court which would have jurisdiction as to the probat of his will, if there was a will. Administration shall be granted to the distributees who apply therefor; preferring first the husband or wife, and then such of the others entitled to distribution as the court shall see fit. If no distributee apply for administration within thirty days from the death of the intestate, the court may grant administration to one or more of his creditors, or to any other person.

1 R. C. p. 382, § 32, 33.
1 Call 1.
6 Call 208.
4 Munf. 231.
6 Munf. 132.
4 Rand. 192.
2 Leigh 248, 267, 719, 761.
4 Leigh 152.

§ 5. Before any grant of administration, as of the estate of an intestate, the person to whom it is granted shall, in the court granting it, give bond, and take an oath that the deceased has left no will, as far as he knows, and that he will faithfully perform the duties of his office, to the best of his judgment. If a will of the decedent be afterwards admitted to record, or if, after administration is granted to a creditor, or other person than a distributee, any distributee who shall not have before refused shall apply for administration, there may be a grant of probat or administration, in like manner as if the former grant had not been made; and the said former grant shall thereupon cease.

1 R. C. p. 383, § 34, 35.

§ 6. Every bond of an executor or administrator shall be in a penalty equal, at the least, to the full value of the personal estate of the deceased to be administered; and where there is a will, which authorizes the executor or administrator to sell real estate, or receive the rents and profits thereof, the bond shall be in a penalty equal, at the least, to the full value, both of the said personal estate, and of such real estate.

1 R. C. p. 379, § 16, 21, 35.
1824-5, p. 8, ch. 10, § 1.
See ante, p. 88, ch. 13, § 8.
4 Call 308.
5 Call 520.
3 Leigh 89, 395.
8 Leigh 54.
3 Grat. 113, 449.

§ 7. Where the will directs that an executor shall not give security, the court shall not require it of him, unless, on the application of any person interested, or from its own knowledge, it thinks security ought to be required.

1 R. C. p. 380, § 22.
1824-5, p. 10, ch. 8, § 2.
2 Rand. 438.

§ 8. The executor of an executor shall have no authority as such to administer the estate of the first testator, but on the

1 R. C. p. 390, § 65.

1824-5, p. 13, § 11. death of the sole or surviving executor of any last will, administration of the estate of the first testator, not already administered, may be granted, with the will annexed, to such person as the court shall think fit to appoint.

§ 9. Where an unmarried woman, who is personal representative, either alone, or jointly with another, shall marry, her husband shall not be a personal representative in her right, but the marriage shall operate as an extinguishment of her authority; and the other personal representative, if there be any, may proceed in discharging the trust as if she were dead; and, if there be no other, administration *de bonis non*, (with the will annexed, if there be a will,) may be granted by the court.

1 R. C. p. 390, § 67.

2 Call 357.

3 Rand. 494

5 Leigh 13, 392

§ 10. If, at any time, three months elapse without there being an executor or administrator of the estate of a decedent, (except during a contest about the decedent's will, or during the infancy or absence of the executor,) the court in which the will was admitted to record, or which has jurisdiction to grant administration on the decedent's estate, shall, on the motion of any person, order the sheriff or other officer of the county or corporation to take into his possession the estate of such decedent and administer the same: whereupon, such sheriff or other officer, without taking any other oath of office, or giving any other bond or security than he may have before taken or given, shall be the administrator, or administrator *de bonis non*, of the decedent, with his will annexed, if there be a will, and shall be thenceforward entitled to all the rights and bound to perform all the duties of such administrator. The court may, however, at any time afterwards, revoke such order, and allow any other person to qualify as executor or administrator.

1 R. C. p. 386,
§ 43.

4 Rand. 158.

§ 11. A copy of the order whereby certificate is granted to any personal representative for obtaining probat or letters of administration, shall be as effectual as the probat or letters made out in due form. Nevertheless, the clerk of the court by which such order is made, shall, when required by any personal representative, make out such probat or letters in due form. The same, when so made out, shall be signed by the clerk, sealed with the seal of the court, and attested by the presiding judge or justice thereof.

Appraisement of estate.

1 R. C. p. 386-7,
§ 44, 45, 46, 50.
1824-5, p. 11, ch.
8, § 6.

§ 12. Every court, by whose order any person is authorized to act as a personal representative, shall, unless where a testator directs his estate not to be appraised, appoint three or more appraisers in every county or corporation in which there may be any goods or chattels of the deceased, or (in the case of a will,) in which there may be any real estate which the personal representative is authorized to sell, or of which he is authorized to receive the rents and profits. After taking an oath for the purpose, they shall appraise such goods or chattels as may be produced to them, and also

the said real estate. The appraisers shall receive each, for their attendance, one dollar per day; the appraisement shall be signed by them and returned to the clerk of such court, and by him be recorded. Every such appraisement shall be *prima facie* evidence of the value of the estate embraced therein, and that it came to the hands of the personal representative.

2 H. and M. 361.
3 Munf. 65
5 Leigh 149.

Of the assets in hands of personal representative; and his duties.

§ 13. It shall be the duty of every personal representative to administer, well and truly, the whole personal estate of his decedent. The appointment of a debtor executor shall not extinguish the debt.

1 R. C. p. 380.
§ 21; p. 383, § 35; p. 389, § 57.
4 Rand. 397.
5 Rand. 51.
12 Leigh 113.

§ 14. The dead victuals, (or so much thereof as may be necessary,) which, at the death of any person, shall have been laid in for consumption in his family, shall remain for the use of such family, if the same be desired by any member of it, without account thereof being made. Any live stock, necessary for the food of the family, may be killed for that use, before the sale or distribution of the estate. And, where the decedent has left a widow or infant children, there shall be vested in them, or such of them as there may be, exempt from sale for funeral expenses, or debts of the decedent, or charges of administration on his estate, such of his property as would, if he were alive and a husband or parent, be exempt from being taken under execution for his debts.

1 R. C. p. 387,
§ 51.
1836-7, p. 47, ch.
69, § 4.

§ 15. Unless it be necessary for the payment of funeral expenses, charges of administration or debts, the personal representative shall not sell estate which the will directs not to be sold.

1 R. C. p. 387,
§ 47, 49, 50.

§ 16. Of the goods not mentioned in the preceding section, other than such as are exempt by the fourteenth section, the personal representative shall, as soon as convenient, sell at public auction such as are likely to be impaired in value by keeping, giving a reasonable credit, (except for small sums,) and taking bond with good security.

Id. § 47.
2 Call 95.
3 Munf. 288.

§ 17. If the goods, so sold, be not sufficient to pay the funeral expenses, charges of administration, debts and legacies, the personal representative shall sell so much of the other goods and chattels, as may be necessary to pay the same, having regard to the privilege of specific legacies. He shall not sell slaves, unless the rest of the personal estate other than legacies, which are privileged, be insufficient; and in that case, shall sell only so many of the slaves as will suffice.

1 R. C. p. 387,
§ 48, 49.
2 H. & M. 69, 245.
5 Munf. 180.
4 Rand. 566.

§ 18. Any estate for the life of another shall go to the personal representative of the party entitled to the estate, and be assets in his hands, and be applied and distributed as the personal estate of such party.

4 Leigh 410.

1 R. C. p. 389,
§ 61.
7 Will. iv. and 1
Vict. ch. 26, § 6.

Suits by or against a personal representative or his sureties.

1 R. C. p.] 389,
90. § 62.

3 & 4 Will. iv. ch.
42, § 14.

1 Wash. 306.

2 Wash. 155.

1 R. C. p. 390,
§ 64.

1826-7, p. 27, ch.
29.

3 & 4 Will. iv. ch.
42, § 2.

4 Munf. 136.

Gilm. 331.

1 R. C. p. 390,
§ 65.

1830-31, p. 101,
ch. 32, § 1.

3 Rand. 287.

§ 19. A personal representative may sue or be sued, upon any judgment for or against, or any contract of, or with, his decedent.

§ 20. An action of trespass, or trespass on the case, may be maintained by or against a personal representative for the taking or carrying away any goods, or for the waste or destruction of, or damage to, any estate of, or by, his decedent.

§ 21. A suit may be maintained against the personal representative of an executor in his own wrong, or the personal representative of a rightful executor or administrator, by whom any waste may have been committed.

§ 22. Where a suit is pending, or a judgment or decree has been rendered, in this state, in favour of a personal representative, upon a contract made, or for a cause of action which accrued, in the lifetime of the decedent, the administrator *de bonis non* of such decedent may sue forth a *scire facias* to have execution upon such judgment or decree, or to revive and prosecute to judgment or decree the suit so pending, if the personal representative who brought it could have maintained the same.

1 R. C. p. 390,
§ 63.

§ 23. Where an execution on a judgment or decree against a personal representative is returned without being satisfied, there may be forthwith* brought and prosecuted an action against the obligors in any bond given by such personal representative for the faithful discharge of his duties.

1 R. C. p. 384,
§ 36; p. 390, § 63.

4 Munf. 466

6 Munf. 377.

1 Rand. 421, 438,
479.

6 Leigh 116.

9 Leigh 1.

§ 24. No personal representative, or any surety of his, shall be chargeable beyond the assets of the decedent, by reason of any omission or mistake in pleading, or false pleading of such representative. And in the action allowed by the preceding section the defendants may plead any pleas, and offer any evidence, which would be admissible in an action against a personal representative suggesting a *devastavit*.

Order in which debts shall be paid.

2 H. & M. 9.

4 H. & M. 57.

§ 25. Where the assets of the decedent, in the hands of his personal representative, after the payment of funeral expenses and charges of administration, are not sufficient for the satisfaction of all demands against him, they shall be applied:

1 Story's L. U. S.
p. 465, § 5; p.
630, § 65.

First, to debts due to the *United States*:

Secondly, taxes and levies assessed upon the decedent previous to his death:

1 R. C. p. 389,
§ 60; p. 408, § 12.

6 Leigh 116.

11 Leigh 1.

Thirdly, debts due as personal representative, guardian or committee, where the qualification was in this state, in which debts shall be included a debt for money received by a husband, acting as such fiduciary in right of his wife:

* See 1 Wash. 31; 1 Call 333, 345; 4 Call 308; 6 Call 21; 1 H. & M. 53; 1 Munf. 407; 3 Munf. 548, 568; 4 Munf. 289; 3 Leigh 89, 395; 1 Grat. 229.

Fourthly, all other demands ratably, except those in the next class; and

Fifthly, voluntary obligations.

§ 26. No payment shall be made to creditors of any one class, until all those of the preceding class or classes shall be fully paid. But a personal representative who, after twelve months from his qualification, pays a debt of his decedent, shall not thereby be personally liable, for any debt or demand against the decedent, of equal or superior dignity, whether it be of record or not, unless, before such payment, he shall have notice of such debt or demand.

CHAPTER CXXXI.

DUTIES OF PERSONAL REPRESENTATIVES AS TO REAL ESTATE; AND THE LIABILITY OF SUCH ESTATE FOR DECEDENTS' DEBTS.

SEC.		SEC.	
1.	Executors or administrators to sell, and administer proceeds of real estate devised to be sold; when to receive and pay rents and profits.	4.	How such assets administered.
2.		5.	Heir or devisee; when liable. <i>Bona fide</i> purchaser not.
3.	Real estate of a decedent assets for payment of debts, in the same order as personal estate.	6.	Heir or devisee liable in equity, not at law.
		7.	Lien, in the life of decedent, not affected.

§ 1. Real estate devised to be sold shall, if no person other than the executors be appointed for the purpose, be sold and conveyed, and rents and profits of any real estate which executors are authorized by the will to receive, shall be received, by the executors who qualify, or the survivor of them. If none qualify, or those qualifying die, or are removed before the trust is executed or completed, the administrator, with the will annexed, shall sell or convey the land so devised to be sold, and receive the proceeds of sale, or the rents and profits aforesaid, as an executor might have done.

§ 2. It shall be one of the duties of an executor or administrator, by virtue of his office, and as such embraced by his official bond, faithfully to pay the rents and profits, or proceeds of sale, of real estate which may lawfully come to his hands, or to the hands of any person for him, to such persons as are entitled thereto.

§ 3. All real estate of any person who may hereafter die, as to which he may die intestate, or which, though he die testate, shall not by his will be charged with, or devised subject to the payment of his debts, or which may remain after satisfying the debts with which it may be so charged or subject to which it may be so devised, shall be assets for the payment of

1 R. C. p. 388.
§ 52.
1824-5, p. 10, ch.
8, § 1.
1839-40, p. 49, ch.
57, § 1.
5 Call 248, 407.
3 Munf. 288, 345.
4 Munf. 333.
5 Munf. 295.
6 Munf. 374.
6 Rand. 594.
3 Leigh 12, 161.
7 Leigh 419.

Id.
2 Rand. 483.
3 Leigh 89.

3 & 4 Will. iv.
ch. 104.
1841-2, p. 55, ch.
98, § 1.
Gilm. 174.

the decedent's debts and all lawful demands against his estate in the order in which the personal estate of a decedent is directed to be applied.

1 R. C. p. 392,
ch. 104, § 3.
1841-2, p. 55, ch.
98, § 3.

2 Leigh 30.
10 Leigh 93.

§ 4. Such assets, so far as they may be in the hands of the personal representative of the decedent, may be administered by the court, in the office whereof there is or may be filed, under the one hundred and thirty-second chapter, a report of the accounts of such representative, and of the debts and demands against the decedent's estate: Or they may, in any case, be administered by a court of equity.

1 R. C. p. 393,
§ 6.

§ 5. Any heir or devisee who shall sell and convey any real estate which by this chapter is made assets, shall be liable to those entitled to be paid out of the said assets, for the value thereof with interest; in such case, the estate conveyed shall not be liable, if the conveyance was *bona fide*, and at the time of such conveyance no suit shall have been commenced for the administration of the said assets, nor any report have been filed as aforesaid of the debts and demands of those entitled.

1841-2, p. 55, § 3.
3 & 4 Will. iv.
ch. 104.

§ 6. An heir or devisee may be sued in equity by any creditor to whom a debt is due, for which the estate descended or devised is liable, or for which the said heir or devisee is liable in respect to such estate; and he shall not be liable to an action at law for any matter for which there may be redress by such suit in equity.

1841-2, p. 55,
ch. 98.

§ 7. This chapter shall not affect any lien, by judgment or otherwise, acquired in the lifetime of the decedent.

Title 39.

FIDUCIARIES GENERALLY.

CHAPTER CXXXII.

OF FURTHER SECURITY FROM FIDUCIARIES; THE SETTLEMENT OF THEIR ACCOUNTS; AND PAYMENT OF WHAT THEY OWE.

SEC.		SEC.	
1.	Clerk to keep list of fiduciaries; what to be entered therein. Penalty for failure	7.	When accounts of fiduciaries laid before commissioner; penalty for failure.
2.	Clerk's duty as to their bonds.	8.	
3.	When and of what inventories to be returned. Penalty for failure.	9.	How fiduciary compelled to do so.
4.	Inventory of property sold, and account of sales, to be returned and recorded.	10.	Commissioners to report on bonds of fiduciaries.
5.		11.	When court may require bond or new bond, or revoke authority of fiduciary.
6.	When fiduciary liable for debts lost by his negligence or failure to make defence.	12.	Effect of such new bond.
		13.	Court to appoint new fiduciary when authority of former one revoked.

SEC.		SEC.	
14. }	Proceedings to have proof of debts.	26. }	Orders of court for payment of
15. }		27. }	debts, &c.
16. }	Commissioner to publish list of cases; how, and when.	28. }	How funds applied at subsequent
17. }	For what time settlement to be, and what may be insisted on before commissioner.	29. }	dividends.
18. }	Allowances made to fiduciary; what	30. }	When distribution to be made; refunding bonds.
19. }	to be reported.	31. }	When fiduciary protected by such bond.
20. }	Report to lie in office, how long.	32. }	Proceeding by legatees or distributees to compel creditors to shew cause against distribution. Liability of legatees, &c., to refund in such cases.
21. }	Then returned, with exceptions, &c.	33. }	How reports of commissioners in county or corporation courts, may be removed to circuit courts.
22. }	When court to act on it; what court may do.	34. }	On such removal, duty of the clerks; duty of circuit court.
23. }	Effect of confirmation of report.		
24. }	Money in hands of fiduciary; how		
25. }	loaned out; how securities transferred to successor.		

Clerk to keep list of fiduciaries; his duty as to their bonds.

§ 1. The clerk of every circuit, county or corporation court, shall, in a book provided for the purpose, keep a record of every personal representative, guardian, curator or committee, authorized to act as such under orders of his court, made after this chapter takes effect, shewing in separate columns, 1, The name of every such fiduciary; 2, The name of the decedent for whose estate he is representative; 3, The name of the living person for whom he is guardian, curator, or committee; 4, The penalty of his bond; 5, The names of his sureties; and 6, The date of the order conferring his authority. If afterwards such authority be revoked, the clerk shall enter, in another column, the date of the order of revocation. Any clerk failing to make such entry, as to any fiduciary, within ten days after the order conferring or revoking the authority as the case may be, or to index the same, within the like time, in the name of the decedent or person represented by such fiduciary, shall, for every such failure, forfeit twenty dollars.

§ 2. The clerk, at the time of making such entry as to any fiduciary, shall examine whether he has given such bond as the law requires, and if it appear that he has given no bond, or that his bond is defective, shall make report thereof to his next court.

Inventories and accounts of sales.

§ 3. Every personal representative, guardian, curator or committee, shall, within four months after the date of the order conferring his authority, or, if his authority was derived before the commencement of this act, and he shall not before have done so, within four months after such commencement, return to the said clerk an inventory of all the personal and real estate which has come to his possession or knowledge, or which is under his management or subject to his authority,

in his fiduciary character; and shall, within four months after any other such estate shall come to his possession or knowledge, return to the said clerk a further inventory thereof: If he fail to do so, he shall pay a fine of not less than fifty, nor more than five hundred, dollars. An appraisement made according to the one hundred and thirtieth chapter, shall be considered an inventory of such estate as is therein mentioned, if it be signed by the personal representative.

Ante, p. 542, 3,
ch. 130, § 12.

1842-3, p. 55, ch.
79, § 1, 2.

§ 4. Every such fiduciary shall, within four months after selling any property as such, return to the said clerk an account of such sales. And when sale is made under any deed of trust, otherwise than under a decree, there shall, within six months after the sale, be returned by the trustee, to the clerk of the court wherein the said deed may have been first recorded, an inventory of the property sold, and an account of the sales. Any trustee failing to comply with this section, shall forfeit his commissions on such sales.

1 R. C. p. 407,
§ 7.
1842-3, p. 55, ch.
79, § 1, 2.

§ 5. Every inventory and account of sales returned under the two preceding sections, shall be recorded by the clerk.

Liability of fiduciary for debts lost or improperly paid.

3 Munf. 198, 288.
2 Leigh 650.

2 R. C. p. 113, ch.
208, § 3.

5 Munf. 223.
11 Leigh 1.

§ 6. If any fiduciary, mentioned before in this chapter, or any agent or attorney at law, shall, by his negligence or improper conduct, lose any debt or other money, he shall be charged with the principal of what is so lost, and interest thereon, in like manner as if he had received such principal. And if any personal representative, guardian, curator or committee shall pay any debt, the recovery of which could be prevented by reason of illegality of consideration, lapse of time, or otherwise, knowing the facts by which the same could be so prevented, no credit shall be allowed him therefor.

Fiduciary to render account or forfeit commissions; how he is compelled to account.

1 R. C. p. 407,
§ 7.
1824-5, p. 12, ch.
8, § 1, 8.
5 Rand. 319.

§ 7. A statement of all the money which any personal representative, guardian, curator or committee, shall have received or become chargeable with, or have disbursed within one year from the commencement of this act, or, if his authority be derived hereafter, within one year from the date of the order conferring his authority, or within any succeeding year, together with the vouchers for such disbursements, shall, within six months after the end of every such year, be exhibited by him before a commissioner of the court, wherein the order was made, conferring his authority. And a statement of all the money which any trustee, acting under a trust created hereafter, shall have received or become chargeable with, or have disbursed within a year from the date of such trust, or within any succeeding year, together with the vouchers for such disbursements, shall be laid by him before a commissioner

of the court of the county or corporation wherein the instrument creating the trust was first recorded.

§ 8. Any such fiduciary who shall wholly fail to lay before such commissioner a statement of receipts for any year, within six months after its expiration, shall have no compensation whatever for his services during the said year; and though a statement be laid before the commissioner, yet if such fiduciary be found chargeable, for that year, with any money not embraced in the said statement, he shall have no commission on such money, unless allowed by the court. This section shall not apply to a case in which, within six months after the end of any year, such fiduciary shall have given to the parties entitled to the money received in such year a statement of the said money, and actually settled therefor with them; nor to a case in which, within the said six months after the end of any year, a fiduciary shall have laid a statement of his receipts within such year before a commissioner in chancery, who may, in a pending suit, have been ordered to settle his account.

1 R. C. p. 407,
§ 8.
1824-5, p. 12, ch.
8, § 8.
6 Leigh 271.
3 Grat. 113.

§ 9. When any such fiduciary shall have so failed to lay before such commissioner a statement of his receipts for any year, a commissioner before whom the said statement might have been laid, shall, upon request made to him, within ten years from the commencement of such year, by any person who is interested as creditor, legatee, distributee or otherwise, or who appears as next friend of an infant so interested, issue a summons, directed to the sheriff or other officer of any county or corporation, requiring him to summon such fiduciary, to lay before the commissioner a statement of his receipts and disbursements, accompanied by his vouchers, for such year, and for the time which may have since elapsed. If the same be not, within one month after the service of such summons, laid before the commissioner who issued it, he shall, on being requested so to do, report the fact to the court which appointed him; and said court shall take such measures to compel the performance by the fiduciary of his duty, as could be taken if an express order of the court had been disobeyed.

1 R. C. p. 407,
§ 8.

Bond of fiduciary to be reported on by commissioner; when fiduciary to give new bond, or have his powers revoked.

§ 10. When any personal representative, guardian, curator, or committee, except a sheriff or other officer, shall have laid such statement before a commissioner, he shall examine, whether said fiduciary has given such bond as the law requires, and whether it is in a penalty, and with sureties sufficient. Any commissioner of the court in which the order was made, conferring on said fiduciary his authority, shall, at any time before such statement is laid before a commissioner, upon the application of any person who is interested or appears as

1 R. C. p. 384,
§ 38; p. 407, § 5;
p. 408 § 10; p.
384-5, § 37, 41.
1824-5, p. 11, ch.
8, § 3, 4.

next friend of an infant interested, after reasonable notice to such fiduciary, examine into any of the said matters, or enquire whether security ought to be required of a fiduciary, who may have been allowed to qualify without giving it, or whether, by reason of the incapacity, misconduct, or removal of any fiduciary, or for any other cause, it is improper to permit the estate of the decedent, ward or other person, to remain under his control. The result of every such examination and enquiry, shall be reported by the commissioner to the court by which he is appointed.

1 R. C. p. 384-5,
§ 38, 40, 41; p.
406-7-8, § 5, 8, 11.
1824-5, p. 14, 15,
ch. 9, § 1, 2, 3; p.
13, ch. 8, § 9.
1848-9, p. 52, ch.
99.

2 Va. Cas. 230.
6 Leigh 399.
12 Leigh 93.

§ 11. The court, under the order of which any such fiduciary derives his authority, when it appears proper on such report of the clerk or a commissioner, or on evidence adduced before it by a surety, or the representative of a surety for such fiduciary, or by any other person interested, may at any time, whether such fiduciary shall or shall not have before given any bond, or whether he shall have given one with or without sureties, order him to give, before such court, a new bond in a reasonable time, to be prescribed by it, in such penalty, and with or without sureties as may appear to it proper, and may, if such order be not complied with, or whenever from any cause it appears proper, revoke and annul his powers. But no such order shall be made unless reasonable notice appear to have been given to such fiduciary by the commissioner who made such report, or by the service of a rule or otherwise. And no such order of revocation shall invalidate any previous act of such fiduciary.

1 R. C. p. 384-5,
§ 38, 39.
1824-5, p. 14, ch.
9, § 1.
1848-9, p. 52, 3, ch.
99.

§ 12. Every bond executed with sureties, under either of the two preceding sections, shall, without any express provision therein to that effect, relate back to the time of the qualification of the fiduciary, and bind the obligors therein for the faithful discharge of the duties of his office or trust from that time, as effectually as if it had been then executed; and the sureties in the former bond and their representatives shall, upon the execution of such new bond, be forthwith discharged, except as to any matter for which a suit may be then depending on the former bond against any such sureties or their representatives, in which case such suit may be prosecuted to judgment or decree; but as to every such matter, the new bond shall, without any express provision therein to that effect, bind the obligors therein to indemnify the sureties in the former bond against all loss or damage in consequence of executing the former bond.

1 R. C. p. 385,
§ 40, 41.
1848-9, p. 52,
ch. 99.

§ 13. After the date of any order revoking and annulling the powers of any fiduciary, the court in which he qualified shall exercise such jurisdiction, either by appointing an administrator *de bonis non*, or a new guardian, or otherwise, as it could have exercised if the said fiduciary had died at that date.

Commissioner's duty as to accounts before him; his report and exceptions thereto.

§ 14. Any commissioner, who has for settlement the accounts of a personal representative of a decedent, shall, when requested so to do, by such representative, or any creditor, legatee or distributee of the decedent, appoint a time and place for receiving proof of debts or demands against the said decedent or his estate, and, before the said time, post a notice of such time and place at the front door of the courthouse of the county or corporation for, or in which, the court is held whereby he is appointed, on the first day of two successive terms of such county or corporation court.

§ 15. The commissioner may adjourn from time to time for receiving such proof, and shall, within one year from the time first appointed for receiving such proof, make out an account of all such debts or demands as may appear to him to be sufficiently proved, stating separately those of each class.

§ 16. Every commissioner shall, on the first day of any county or corporation court of his county or corporation, post at the front door of the courthouse of such county or corporation court a list of the fiduciaries whose accounts are before him for settlement, stating the names of such fiduciaries, the nature of their accounts, whether as personal representative, guardian, curator, committee or trustee, and the names of their decedents, or of the persons for whom they are guardians, curators or committees, or under whose deed or other instrument of trust they are acting. No account of any fiduciary shall be completed by any commissioner, until it shall have been mentioned in such list, nor for ten days after being so mentioned.

§ 17. When a commissioner has before him for settlement the account of a fiduciary for any year, if there be any time prior to such year, for which the fiduciary has not settled, according to the laws in force before this chapter takes effect, the settlement shall be also for such time. Any person who is interested, or appears as next friend for another interested, in any such account, may, before the commissioner, insist upon or object to any thing, which could be insisted upon or objected to by him, or for such other, if the commissioner were acting under an order of a court of chancery for the settlement thereof, made in a suit to which he or such other was a party. 5 Munf. 223.

§ 18. The commissioner, in stating and settling the account, shall allow the fiduciary any reasonable expenses incurred by him as such;* and also, except in cases in which it is otherwise provided, a reasonable compensation, in the form of a commission (on receipts,) or otherwise.† 1 R. C. p. 389, § 59; p. 410, § 24. 1824-5, p. 12, ch. 8, § 8.

* See 2 H. & M. 9; 4 H. & M. 57; 4 Munf. 83; and where vouchers are wanting as to what may be allowed on party's oath, 3 Munf. 289; 12 Leigh 113.

† As to commissions of fiduciaries generally, see 1 Wash. 246; 2 Call 102,

§ 19. Every account stated under this chapter shall be reported, with any matters specially stated deemed pertinent by the commissioner, or which may be required by any person interested to be so stated.

1 Munf. 242.

§ 20. Such report shall remain in the commissioner's office, for ten days after it is completed, during which time any person interested may inspect the same and file exceptions thereto.

1824-5, p. 12, ch. 8, § 8.

§ 21. The commissioner shall file the report in the office of the court by which he is appointed, as soon as practicable after the expiration of the said ten days, and with his report, shall return the said exceptions, with such remarks as he may see fit to make, and such of the vouchers or evidence before him, as any person interested may desire him to return, or as he may deem proper.

Orders of court on report; their effect; the transfer of securities and payment of money and delivery of property in the hands of fiduciary.

1 R. C. p. 407,
§ 7.
4 Grat. 87.

§ 22. The court, after one month from the time the report may have been filed in its office, shall examine the same, with such exceptions thereto as may be filed at any time before such examination. It shall correct any errors which may appear on the exceptions; and any appearing on the face of the account, whether excepted to or not; and to this end, may recommit the report to the same or another commissioner, as often as it sees cause; or it may cause a jury to be empaneled, to enquire into any matter which, in its opinion, should be ascertained in that way; or it may confirm the report in whole or in a qualified manner. The clerk shall, in a book kept for the purpose, record every report which may be so confirmed, and, at the foot of it, the order of confirmation. Any vouchers or other evidence remaining with the commissioner, at the time of such confirmation, and not wanting for any further matter of enquiry before him, shall be returned by him to the party who filed the same.

Id.
4 Munf. 369.
3 Leigh 407.
9 Leigh 571.
10 Leigh 434.
12 Leigh 112.

§ 23. The report, to the extent to which it may be so confirmed, shall be taken to be correct, except so far as the same may, in a suit, in proper time, be surcharged or falsified.

1 R. C. p. 407,
§ 9.

§ 24. Where it appears, by a report made as aforesaid, or a special report of the commissioner, that money is in the hands of any such fiduciary, the court, before which the report so comes, may order the same to be invested or loaned out, or make such other order, respecting the same, as may seem to it proper.

190; 1 Munf. 150; 2 Munf. 242; 3 Munf. 29; Id. 198; Id. 289; 4 Munf. 83; 5 Munf. 224; 2 Rob. 582.

As to mode of charging interest where fiduciary is a guardian, see ante, p. 534, ch. 127, § 10: where he is an executor or administrator, see 1 Wash. 246; 2 Call 102; 1 Munf. 150; Id. 183; 3 Munf. 29; Id. 198; Id. 289; 5 Munf. 223; 3 Leigh 348; Id. 407; 6 Leigh 271; 9 Leigh 484.

And where fiduciary is a trustee in a deed of trust, as to disbursements, commissions and interest, see 4 H. & M. 415; 6 Munf. 99.

§ 25. When any securities for money loaned or invested shall be standing in the name of any such fiduciary who shall have died, or whose power shall have been revoked, and such fiduciary or his personal representative shall not have transferred such securities to his successor, the court in which such fiduciary shall have qualified, upon the petition of such successor, or of any other person interested, may direct such securities to be transferred to such successor, or a receiver of the said court or otherwise, and may direct the dividends, interest or proceeds of the said securities, to be received or paid in such manner as the said court shall think proper.

36 Geo. iii. ch. 90,
§ 3.
1 Will. iv. ch. 65,
§ 33.

§ 26. When a court shall have confirmed, either in the whole or in a qualified manner, a report of the accounts of any guardian, curator, committee, or trustee aforesaid, it may order payment, of what shall appear due on such accounts, to such persons as would be entitled to recover the same by suit in equity.

§ 27. When a court shall have so confirmed a report of the accounts of any personal representative, and of the debts and demands against his decedent's estate, it shall order to be applied to the payment of such debts and demands, so much of the estate in the hands of such representative, and to such creditors, as shall appear proper, reserving, where it seems to the court reasonable to do so, to meet a claim of a surety for the decedent, or any other contingent claim against the estate, the proof of which has to be deferred, or to meet any other claim not finally passed upon, such sum as it may deem sufficient to pay it, or a proportion thereof, equal to what is ordered to be paid to other creditors of the same class, should the payment of it, or of such proportion, afterwards appear proper.

§ 28. Upon any such claim being allowed, subsequent to any dividend, there shall be ordered to be paid, out of the estate remaining in the hands of the representative, or under the control of the court, (without regarding any debt of superior dignity, for which there may have been no such reservation,) the amount of such claim, or a proportion thereof, equal to what shall have been paid to other creditors of the same class, if there be enough remaining to pay the same, or such proportion, but the former dividend shall not be disturbed.

§ 29. When, at the time of any dividend, the whole assets are not distributed, or when further assets afterwards come to the hands of the personal representative, if, after paying such proportion as is mentioned in the preceding sections, or any claim allowed subsequent to such dividend, there remain a surplus, it shall be divided among all the creditors who shall have proved debts and demands against the decedent's estate, in the order and proportions in which they may be entitled.

§ 30. A personal representative shall not be compelled to pay any legacy given by the will, or make distribution of the estate of his decedent, until after a year from the date of the order conferring authority on the first executor or administra-

1 R. C. p. 389,
§ 58.
1822-3, p. 39, ch.
37, § 2.
1824-5, p. 13, ch.
8, § 9.
1825-6, p. 24, ch.
23, § 2.
4 H. and M. 293.

tor of such decedent. And, except where it is otherwise specially provided, he shall not then be compelled to make such payment or distribution, until the legatee or distributee shall give him a bond, executed by himself or some other person, with sufficient security, conditioned to refund a due proportion of any debts or demands which may afterwards appear against the decedent, and of the costs attending their recovery. Such bond shall be filed in the clerk's office of the court which may have decreed such payment or distribution, or in which the accounts of such representative may be recorded.

1824-5, p. 13, ch.
10, § 10.

1825-6, p. 24, ch.
23, § 2.

4 Munf. 119.
1 Grat. 431.

§ 31. If any personal representative shall pay any legacy given by the will, or distribute any of the estate of his decedent, and there be filed, in the said clerk's office, a proper refunding bond for what is so paid or distributed, with security therein, sufficient at the time of taking it, such personal representative shall not, on account of what is so paid or distributed, be personally liable for any debt or demand against the decedent, whether it be of record or not, unless, within one year from his qualification, or before such payment or distribution, he shall have had notice of such debt or demand. But if any creditor of the decedent thereafter, establish his debt or demand by judgment or decree therefor, or by its being allowed in a commissioner's report, which is confirmed, a suit may be maintained on such refunding bond, in the name of the obligee or his personal representative, for the benefit of such creditor, and a recovery shall be had thereon, to the same extent that would have been had, if the said obligee or his personal representative had satisfied such debt or demand.

1839-40, p. 45, ch.
52, § 3, 5.

2 Call 95.

§ 32. When a report of the accounts of any personal representative, and of the debts and demands against his decedent's estate, shall have been filed in the office of a court, whether under this chapter or in a suit in chancery, the said court, after two years from the qualification of such personal representative, may, on the motion of a legatee or distributee of his decedent, make an order for the creditors of such decedent to shew cause, on some day to be named in the order, against the payment and delivery of the estate of the decedent to his legatees or distributees; a copy of which order shall be published once a week for four weeks, in one or more newspapers, as the court may direct, and posted at the door of the courthouse of the county or corporation for or in which the court is held, on the first day of two successive terms of such county or corporation court. On or after the day named in the order, the court may order the payment and delivery, to the legatees or distributees, of the whole or a part of the money and other estate, not before distributed, with or without a refunding bond, as it may prescribe. But every legatee or distributee, to whom any such payment or delivery is made, and his representatives, may, in a suit brought against him, within ten years afterwards, be adjudged to refund a due proportion of any debts or demands appearing against the decedent and of the costs attending their recovery.

Reports of commissioners removed to circuit court.

§ 33. Any county or corporation court to which a report may be made under this chapter, and on the motion of any person interested and for good cause shewn, shall order it to be removed to the circuit court, having jurisdiction over such county or corporation. Such removal from the corporation court of *Richmond* or the court of *Henrico* county, shall be to the circuit court of chancery for that county. If any county or corporation court refuse, the circuit court, or the judge thereof in vacation, may order such removal.

§ 34. When a report is so ordered to be removed, the clerk of the county or corporation court shall deliver to the clerk of the circuit court the said report with the vouchers or evidence returned therewith or exceptions taken thereto, and copies of all orders made, and a statement of the costs incurred by any party, therein. Whereupon the case shall be proceeded in by the circuit court, as if it had been originally cognizable, and the previous proceedings had therein; but the report, instead of being recorded in the circuit court, shall be recorded in the county or corporation court, after which it shall be returned to and filed in the office of the circuit court. The costs, attending such removal, shall be paid as the circuit court may order.

Title 40.

OF SUITS FOR LAND OR WASTE.

CHAP. 133. Of the right of entry.

134. Of the summary remedy for unlawful entry or detainer.

135. Of the action of ejectment.

136. Of allowance for improvements.

CHAPTER CXXXIII.

OF THE RIGHT OF ENTRY.

SEC.

- | | | |
|----|---|--|
| 1. | } | Wife's right of entry not affected by judgment against, or acts of, husband. |
| 2. | | |
| 3. | | Default or surrender of tenant for |

SEC.

- | |
|---|
| life, not to prejudice reversioner, &c. |
| 4. Right of entry not affected by descent cast. |

§ 1. A woman shall not be barred of her right of entry into land by a judgment in her husband's lifetime by default or collusion, but after his death may prosecute the same by any proper suit: or in the lifetime of the husband, if he will not appear, or against his wife's consent, will render the wife's

1 R. C. p. 514, ch. 129, § 1.

lands during the coverture in a suit against the husband and wife for lands which are her inheritance, the wife may come at any time before judgment and defend her right.

1 R. C. p. 514, ch.
129, § 5.
1 Call 190.
4 Munf. 499.

§ 2. No conveyance or other act suffered or done by the husband only, of any land which is the inheritance of his wife, shall be or make any discontinuance thereof, or be prejudicial to the wife or her heirs, or to any having right or title to the same by her death, but they may respectively enter into such land, according to their right and title therein, as if no such act had been done.

1 R. C. p. 514, ch.
129, § 3.

§ 3. If any tenant for life of land do make default, or surrender, the heirs, or those entitled to the remainder, may before judgment be admitted to defend their right, or after judgment may assert their right without prejudice from such default or surrender.

Id § 4.
3 and 4 Will. iv.
ch. 27, § 10, 11, 30.

§ 4. The right of entry on, or action for, land, shall not be tolled or defeated by descent cast.

CHAPTER CXXXIV.

OF THE SUMMARY REMEDY FOR UNLAWFUL ENTRY OR DETAINER.

SEC.

1. How person turned or kept out of possession to institute proceedings to be restored to it.
2. Summons when returnable, and

SEC.

- to be served; proceedings there upon.
3. What the verdict shall find; judgment thereon.
4. Effect of judgment and verdict.

1 R. C. p. 455,
ch. 115, § 1, 2, 3,
4, 5, 6.
4 Rand. 468.
2 Rob. 235.

§ 1. If any forcible or unlawful entry be made upon land, or if, where the entry is lawful and peaceable, the tenant shall detain the possession of land after his right has expired, without the consent of him who is entitled to the possession, the party so turned out of possession, no matter what right or title he had thereto, or the party against whom such possession is unlawfully detained may, within three years after such forcible or unlawful entry, or such unlawful detainer, sue out of the clerk's office of the court of the county or corporation, in which the land or some part thereof may be, a summons against the defendant to answer the complaint of the plaintiff, that the defendant is in possession and unlawfully withholds from the plaintiff the premises in question (describing them) and no other declaration shall be required.

1 R. C. p. 456,
§ 8, 12, 13, 14.
1825-6, p. 26, ch.
25, § 2.

§ 2. The summons may be returnable to, and the case heard and determined at, any term of such court, whether monthly or quarterly. Such summons shall be served at least ten days before the return day thereof. If the defendant appear, he shall plead to the summons, and his plea shall be

not guilty. Upon this issue, or upon the return of the first or any subsequent summons, "executed," if the defendant fail to plead, a jury shall be empaneled to try whether he unlawfully withholds the premises in controversy. Such cause shall have precedence for trial over all other civil causes on the docket.

§ 3. If it appear that the plaintiff was forcibly or unlawfully turned out of the possession, or that it was unlawfully detained from him, unless it also appear that the defendant has held or detained the possession for three years before the date of the summons, the verdict shall be for the plaintiff for the said premises, or such part thereof as may be found to have been so held or detained. When part only of the premises is found for the plaintiff, the verdict shall describe the part so found; in such cases judgment shall be for the plaintiff. If the verdict be for the defendant as to the whole, judgment shall be for him.

§ 4. No such judgment shall bar any action of trespass or ejectment between the same parties, nor shall any such verdict be conclusive, in any such future action, of the facts therein found.

CHAPTER CXXXV.

OF THE ACTION OF EJECTMENT.*

SEC.

1. } When, where, and by whom it
to } may be brought.
4. }

5. Who to be defendant.

SEC.

6. } How action commenced, and what
to } to be stated in declaration.
9. }

* With little material alteration, this important chapter has been adopted by the legislature as it was reported by the revisors. In the note which was appended to it, in their report, explaining their reasons for reporting it, they say: "This draft is taken substantially, as to its main features, from part 3, title 1, ch. 3, of the revised statutes of *New York*, vol. 2, p. 302. We intend it as a substitute for the present remedy of ejectment, and for the writ of right as prescribed by the act of 1818, 1 R. C. ch. 118, p. 463, which have superseded the various writs at common law and by statute, for the enforcement of rights of possession and rights of property in real estate. In practice, although perhaps not abolished, all the other *possessory* and *droitural* actions, such as the *writ of entry*, *writ of assize*, the *writs of formedon in descender, reverter* and *remainder*, have become obsolete. The effect of this chapter, if adopted, will be to go one step further, and supersede the writ of right; or rather, by moulding into one simple and comprehensive statute, all the substantial provisions of existing law, with such improvements as may be found proper to disentangle justice from nets of form, preserve all the benefits of the *writ of right* and of the action of *ejectment*, as well as of all other actions *possessory* and *droitural*." This the revisors supposed was done by this chapter, "adapting the action of ejectment to the trial of conflicting titles to real property, as well as to the recovery of the possession thereof, at the same time that the remedy is stripped of those absurd fictions which have heretofore disfigured it." The material principles of the chapter have been adopted, not only in *New York*, but in *England*, (3, and 4 Will. iv. ch. 26,) and in *Massachusetts*, (Mass. Rev. Stat. 609, ch. 101.)

SEC.		SEC.	
10.	Declaration may contain several counts. How several parties may be named therein.	23.	What shall be found in the verdict; whether for all the plaintiffs against all the defendants, or for part against part; or for all the premises claimed, or only part.
11.	Notice to defendant, and service of it.	27.	
12.	If defendant fail to appear, judgment.	28.	Where right of plaintiff expires before trial.
13.	Of the defence. What given in evidence on the plea.	29.	What to be the judgment for plaintiff; when the suit is to recover dower, court may have it assigned.
14.	What the plaintiff is to prove.	30.	Plaintiff to give notice of claim for rents and profits. How assessed.
15.	When several plaintiffs or defendants, what to be proved, and what verdict rendered.	31.	
16.		32.	Defendant to give notice of claim for improvements. How to be allowed.
17.	When there may be several judgments against defendants.	33.	
18.	Part of premises claimed may be recovered. Possession of part, when not deemed possession of the whole.	34.	Such assessment and allowance may be postponed, until after verdict.
19.		35.	Judgment conclusive against all the parties.
20.	When defendant entitled to conveyance, plaintiff not to recover.	36.	Saving in favour of person under disability. Proviso as to <i>mesne</i> profits recoverable from any other than defendant.
21.		37.	
22.	Notice to be given of such defence. When defendant may resort to equity.	38.	Writ of right, writ of entry, and writ of formedon, abolished.

When and where it may be brought; and of the parties and proceedings.

6 Munf. 38, 303.
2 Rand. 422.

§ 1. The action of ejectment is retained and may be brought as heretofore, subject to the provisions hereinafter contained.

3 Rand. 563.
8 Leigh 468.

§ 2. It may also be brought in the same cases in which a writ of right may now be brought, and by any person claiming real estate in fee or for life, or for years, either as heir, devisee or purchaser, or otherwise.

§ 3. Every such action shall be brought in the circuit, county or corporation court, of the county or corporation in which the real estate, or some part thereof, is.

1 Rand. 255.

§ 4. No person shall bring such action unless he has, at the time of commencing it, a subsisting interest in the premises claimed, and a right to recover the same, or to recover the possession thereof, or of some share, interest or portion thereof.

2 Call 502, 504.
3 Rand. 462.
4 Rand. 74.

§ 5. The person actually occupying the premises shall be named defendant in the declaration. If they be not occupied, the action must be against some person exercising acts of ownership thereon or claiming title thereto, or some interest therein, at the commencement of the suit. If a lessee be made a defendant, at the suit of a party claiming against the title of his landlord, such landlord may appear and be made a defendant with, or in the place of, his lessee.

§ 6. The action shall be commenced by the service of a declaration, in which the name of the real claimant shall be inserted as plaintiff; and all the provisions of law, concerning a lessor of a plaintiff, shall apply to such plaintiff.

3 Call 362.

§ 7. It shall be sufficient for the plaintiff to aver in his declaration, that on some day specified therein, (and which

shall be after his title accrued,) he was possessed of the premises claimed, and being so possessed thereof, that the defendant afterwards, on some day to be stated, entered into such premises, and that he unlawfully withholds from the plaintiff the possession thereof, to his damage, such sum as the plaintiff shall state.

§ 8. The premises claimed, shall be described in the declaration with convenient certainty, so that, from such description, possession thereof may be delivered. 3 H. & M. 309.

§ 9. The plaintiff shall also state, whether he claims in fee, or for his life, or the life of another, or for years, specifying such lives, or the duration of such term; and when he claims an undivided share or interest, he shall state the same.

§ 10. The declaration may contain several counts, and several parties may be named as plaintiffs jointly in one count, and separately in others. 6 Munf. 38, 303.

§ 11. To such declaration there shall be subjoined a notice in writing, by the plaintiff or his attorney, addressed to the defendant, and notifying him that the said declaration will be filed, on some specified rule day, in the clerk's office of the court, in which the suit is to be prosecuted, or in court, on some named day in the then next term of said court. Such declaration and notice shall be served, in the same manner as other notices. 1838, p. 75, ch. 97, § 1.

§ 12. Upon filing the declaration, with proof of the service of notice thereof as aforesaid, the plaintiff shall be entitled to a rule upon the defendant, to appear and plead at the next rule day, if the declaration be filed at rules, or if filed in court, to appear and plead within such time as shall be prescribed by the court; and if upon service of such rule, he shall fail so to appear and plead, his default shall be entered and judgment given against him. 1 Call 437, 8.

§ 13. The defendant may demur to the declaration, as in personal actions, or plead thereto, or do both. But he shall plead the general issue only, which shall be, that the defendant is not guilty of unlawfully withholding the premises claimed by the plaintiff in the declaration. Upon such plea, the defendant may give the same matter in evidence, and the same proceedings shall be had, as upon a plea of *not guilty*, in the present action of ejectment, except as herein otherwise provided, and he may also give in evidence any matter which, if pleaded in the present writ of right, would bar the action of the plaintiff. 1 R. C. p. 496, § 34, 35; p. 511, § 102.

What is to be proved at the trial.

§ 14. The consent rule, heretofore used, is abolished. The plaintiff need not prove an actual entry on, or possession of the premises demanded, or receipt of any profits thereof, nor any lease, entry or ouster, except as hereinafter provided. But it 1 R. C. p. 510, § 90. 5 Munf. 374. 1 Rand. 255.

3 Rand. 563.
1 Grat. 165, 211.

shall be sufficient for him to shew a right to the possession of the premises, at the time of the commencement of the suit.*

10 Leigh 457.

§ 15. If the action be by one or more tenants in common, joint tenants or coparceners, against their co-tenants, the plaintiff shall be bound to prove actual ouster or some other act amounting to total denial of the plaintiff's right as co-tenant.

§ 16. If the action be against several defendants, and a joint possession of all be proved, and the plaintiff be entitled to a verdict, it shall be against all, whether they pleaded separately or jointly.

3 Rand. 462.
4 Rand. 85.

§ 17. If the action be against several defendants, and it appear on the trial, that any of them occupy distinct parcels in severalty or jointly, and that other defendants possess other parcels in severalty or jointly, the plaintiff may recover several judgments against them, for the parcels so held by one or more of the defendants, separately from others.

§ 18. The plaintiff may recover any specific or any undivided part or share of the premises, though it be less than he claimed in the declaration.

1 R. C. p. 510,
§ 89.
1 Grat. 165, 211.

§ 19. In a controversy affecting real estate, possession of part shall not be construed as possession of the whole, when an actual adverse possession can be proved.

Equitable defences.

1830-31, p. 64, ch.
11, § 66.
3 Grat. 283.

§ 20. A vendor, or any claiming under him, shall not, at law any more than in equity, recover against a vendee, or those claiming under him, lands sold by such vendor to such vendee, when there is a writing, stating the purchase and the terms thereof, signed by the vendor or his agent, and there has been such payment or performance of what was contracted to be paid or performed on the part of the vendee, as would in equity entitle him, or those claiming under him, to a conveyance of the legal title of such land from the vendor, or those claiming under him, without condition.

1830-31, p. 63, ch.
11, § 65.

§ 21. The payment of the whole sum, or the performance

* In the chapter as reported by the revisors, (p. 694 of their reports,) the last clause of this section read thus: "But it shall be sufficient for him to shew a right to the possession of the premises at the time of the commencement of the suit, or a better right to hold the same than that of the defendant." The revisors also reported as the next section, the following:

"§ 15. When the plaintiff shews a better title in himself than that of the defendant, the latter shall not be allowed to defeat the action by shewing an older title than that of the plaintiff, in a third party, under whom the defendant does not claim, and with whom he has no privity, in law or equity."

The words in *italics* at the end of the 14th section, and the above proposed as the fifteenth section, were struck out by the legislature. It is thought proper to state this fact in the history of the legislation on this chapter, as it may have an important bearing on the construction and effect of the act in respect to the rule proposed to be settled by the provisions so struck out. The cases in the court of appeals in which that rule has been the subject of judicial discussion and decision are noted in the margin to § 14. The following authorities relate also to the same subject: 4 Burr. 2487; 5 T. Rep. 110, *note*. *Bull. nisi prius*, 110; 8 Cranch 229; 3 Wheat. 224; 7 Wheat. 28.

of the whole duty, or the accomplishment of the whole purpose, which any mortgage or deed of trust may have been made to secure or effect, shall prevent the grantee or his heirs from recovering at law, by virtue of such mortgage or deed of trust, property thereby conveyed, wherever the defendant would in equity be entitled to a decree, re-vesting the legal title in him, without condition.

§ 22. A defendant shall not be allowed to avail himself of either of the two preceding sections, unless notice in writing, of such defence, shall have been given, sixty days before the trial. Whether he shall or shall not make or attempt such defence, he shall not be precluded from resorting to equity for any relief to which he would have been entitled, if the said sections had not been enacted.

7 Geo. ii. ch. 20,
§ 1.
3 Grat. 283.

1830-31, p. 63, 4,
ch. 11, § 65, 66.

Verdict and judgment.

§ 23. If the jury be of opinion for the plaintiffs, or any of them, the verdict shall be for the plaintiffs, or such of them as appear to have right to the possession of the premises, or any part thereof, and against such of the defendants, as were in possession thereof, or claimed title thereto, at the commencement of the action.

§ 24. Where any plaintiff appears to have no such right, the verdict as to such plaintiff shall be for the defendants.

§ 25. When the right of the plaintiff is proved to all the premises claimed, the verdict shall be for the premises generally, as specified in the declaration, but if it be proved to only a part or share of the premises, the verdict shall specify such part particularly, as the same is proved, and with the same certainty of description, as is required in the declaration.

1 Call 246.
1 Munf. 162.
6 Munf. 25.
2 Rand. 68.

§ 26. If the verdict be for an undivided share or interest in the premises claimed, it shall specify the same, and if for an undivided share or interest of a part of the premises, it shall specify such share or interest, and describe such part as before required.

§ 27. The verdict shall also specify the estate found in the plaintiff, whether it be in fee or for life, stating for whose life, or whether it be a term of years, and specifying the duration of such term.

§ 28. If the right or title of a plaintiff in ejectment expire after the commencement of the suit, but before trial, the verdict shall be according to the fact, and judgment shall be entered for his damages, sustained from the withholding of the premises by the defendant, and as to the premises claimed, the judgment shall be, that the defendant go thereof without day.

§ 29. The judgment for the plaintiff shall be, that he recover the possession of the premises, according to the verdict of the jury, if there be a verdict, or if the judgment be by default, or on demurrer, according to the description thereof in the declaration. If the action be brought to recover dower,

3 Rand. 462.

See ante, p. 475,
ch. 110, § 10.

which has not been assigned before the commencement of such action, the court, in which the judgment is rendered, may have dower assigned by commissioners appointed for that purpose.

How rents and profits, &c. recovered.

1 R. C. p. 464, ch.
118, § 1.
1838, p. 75, § 2.
2 Call 508.
4 Grat. 16.

§ 30. If the plaintiff file with his declaration a statement of the profits and other damages which he means to demand, and the jury find in his favour, they shall at the same time, unless the court otherwise order, assess the damages for *mesne* profits of the land for any period not exceeding five years previously to the commencement of the suit until the verdict, and also the damages, for any destruction or waste of the buildings or other property, during the same time, for which the defendant is chargeable.

§ 31. If there be no issue of fact tried in the cause, and judgment is to be rendered for the plaintiff on demurrer, default or otherwise, the said damages shall be assessed by the court, unless either party shall move to have them assessed by a jury, or the court shall think proper to have them so assessed, in which cases a jury shall be empaneled, to assess them.

§ 32. If the defendant intends to claim allowance for improvements, made upon the premises by himself or those under whom he claims, he shall file with his plea or at a subsequent time before the trial (if for good cause allowed by the court,) a statement of his claim therefor, in case judgment be rendered for the plaintiff.

Post ch. 136.

§ 33. In such case the damages of the plaintiff, and the allowance to the defendant for improvements shall be estimated, and the balance ascertained, and judgment therefor rendered, as prescribed in the one hundred and thirty-sixth chapter.

§ 34. On the motion of either party, the court may order the assessment of such damages, and allowance, to be postponed until after the verdict on the title is recorded.

Effect of judgment in ejectment.

4 Munf. 382.
6 Munf. 233.

§ 35. Any such judgment in an action of ejectment, instituted after this chapter takes effect, shall be conclusive, as to the title or right of possession established in such action, upon the party against whom it is rendered, and against all persons claiming from, through or under such party, by title accruing after the commencement of such action, except as hereinafter mentioned.

1 R. C. p. 466, ch.
118, § 5.

§ 36. If any person, against whom such judgment is rendered, shall be, at the time of the judgment, an infant, married woman, or insane, the judgment shall be no bar to an action, commenced within five years after the removal of such disability.

§ 37. Nothing in this chapter shall prevent the plaintiff from

recovering *mesne* profits, or damages done to the premises, from any person, other than the defendant, who may be liable to such action.

Real actions abolished.

§ 38. No writ of right, writ of entry, or writ of formedon, shall be brought after the commencement of this act.

1 R. C. p. 496,
§ 34.
3 and 4 Will. iv.
ch 27, § 36, 37, 38.

CHAPTER CXXXVI.

OF ALLOWANCE FOR IMPROVEMENTS.*

SEC.	SEC.
1. How defendant may apply therefor, and have the judgment suspended.	8. How plaintiff, tenant for life, paying for improvements, to be reimbursed.
2. } How damages to be assessed, and	9. Proviso as to recovering against mortgagor.
3. } for what time.	10. } Plaintiff may require the land only
4. }	11. } to be valued; how he may elect
5. When damages may be for more than five years; when not.	12. } to relinquish his title to defendant.
6. Allowance for improvements to be set off against rents, &c., and judgment for balance.	13. How payment to be made by defendant of such value.
7. Balance for defendant lien on the land.	14. Provision in case plaintiff be under disability.
	15. When and how defendant, if evicted, may recover from the plaintiff.

How value of improvements is assessed and paid.

§ 1. Any defendant against whom a decree or judgment shall be rendered for land, where no assessment of damages has been made under the preceding chapter, may, at any time before the execution of the decree or judgment, present a petition to the court rendering such decree or judgment, stating that he or those under whom he claims, while holding the premises under a title believed by him or them to be good, have made permanent improvements thereon, and praying that he may be allowed for the same over and above the value of the use and occupation of such land; and thereupon the court may, if satisfied of the probable truth of the allegation, suspend the execution of the judgment or decree, and empanel a jury to assess the damages of the plaintiff, and the allowances to the defendant for such improvements.

1831-2, p. 61. ch.
72, § 7.
1 Wash. 336.
1 Rand. 58.
2 Rand. 6.

§ 2. The jury, in assessing such damages, either under this chapter or under the preceding chapter, shall estimate against the defendant the clear annual value of the premises during

* In reporting the nine first sections of this chapter, the revisors (p. 699 of their report) referred to the revised statutes of *New York*, vol. 2, p. 236, and of *Massachusetts*, p. 612, ch. 101, § 16 to § 32. The other sections of this chapter were introduced by the joint committee on revision; they are taken substantially from the revised statutes of *Massachusetts*, p. 613, § 32 to 39.

the time he was in possession thereof, (exclusive of the use by the tenant of the improvements thereon made by himself or those under whom he claims,) and also the damages for waste or other injury to the premises committed by the defendant.

1831-2, p. 61, ch.
72, § 7.

1 Wash. 336.
1 Rand. 58.
2 Rand. 6.

§ 3. The defendant shall not be liable for such annual value for any longer time than five years before the suit, or for damages for any such waste or other injury done before said five years, unless where he claims for improvements as aforesaid.

Id.

§ 4. If the jury shall be satisfied that the defendant, or those under whom he claims, made, on the premises, at a time when there was reason to believe the title good under which he or they were holding the said premises, permanent and valuable improvements, they shall estimate in his favour the value of such improvements as were so made before notice in writing of the title under which the plaintiff claims, not exceeding the amount actually expended in making them, and not exceeding the amount to which the value of the premises is actually increased thereby at the time of the assessment.

Id.

§ 5. If the sum estimated for the improvements exceed the damages estimated by the jury against the defendant as aforesaid, they shall then estimate against him, for any time before the said five years, the rents and profits accrued against, or damage for waste or other injury done by, him or those under whom he claims, so far as may be necessary to balance his claim for improvements, but in such case he shall not be liable for the excess, if any, of such rents and profits or damages, beyond the value of the improvements.

Id.

§ 6. After off-setting the damages assessed for the plaintiff and the allowances to the defendant for improvements, if any, the jury shall find a verdict for the balance for the plaintiff or defendant, as the case may be, and judgment or decree shall be entered therefor according to the verdict.

Id.

§ 7. Any such balance due to the defendant shall constitute a lien upon the land recovered by the plaintiff, until the same shall be paid.

Id.

§ 8. If the plaintiff claim only an estate for life in the land recovered, and pay any sum allowed to the defendant for improvements, he or his personal representative may recover, at the determination of his estate, from the remainderman or reversioner, the value of the said improvements as they then exist, not exceeding the amount so paid by him, and shall have a lien therefor on the premises, in like manner as if they had been mortgaged for the payment thereof, and may keep possession of said premises until it be paid.

Id.

§ 9. Nothing in this chapter, nor any thing in the one hundred and thirty-fifth chapter concerning rents, profits and improvements, shall extend or apply to any suit brought by a mortgagee, or his heirs or assigns, against a mortgagor or his heirs or assigns for the recovery of the mortgaged premises.

Plaintiff may elect to relinquish the land.

§ 10. When the defendant shall claim allowance for improvements, as before provided, the plaintiff may, by an entry on the record, require that the value of his estate in the premises, without the improvements, shall also be ascertained.

§ 11. The value of the premises, in such case, shall be estimated as it would have been at the time of the enquiry, if no such improvements had been made on the premises by the tenant or any person under whom he claims, and shall be ascertained in the manner hereinbefore provided for estimating the value of improvements.

§ 12. The plaintiff in such case, if judgment is rendered for him, may, at any time during the same term, or before judgment or decree is rendered on the assessment of the value of the improvements, in person or by his attorney in the cause, enter on the record his election to relinquish his estate in the premises to the defendant, at the value so ascertained, and the defendant shall thenceforth hold all the estate that the plaintiff had therein at the commencement of the suit, provided he pay therefor the said value, with interest, in the manner in which the court may order it to be paid.

§ 13. The payments shall be made to the plaintiff, or into court for his use, and the land shall be bound therefor, and if the defendant fail to make the said payments within or at the times limited therefor, respectively, the court may order the land to be sold, and the proceeds applied to the payment of said value and interest, and the surplus, if any, to be paid to the defendant; but if the said nett proceeds be insufficient to satisfy the said value and interest, the defendant shall not be bound for the deficiency.

§ 14. If the party, by or for whom the land is claimed in the suit, be a *feme covert*, minor or insane, such value shall be deemed to be real estate, and be disposed of as the court may consider proper, for the benefit of the persons interested therein.

§ 15. If the defendant, or his heirs or assigns, shall, after the premises are so relinquished to him, be evicted thereof by force of any better title than that of the original plaintiff, the person so evicted may recover from such plaintiff, or his representatives, the amount so paid for the premises, as so much money had and received by such plaintiff, in his lifetime, for the use of such person, with lawful interest thereon from the time of such payment.

CHAPTER CXXXVII.

OF WASTE.*

SEC.

1. Tenant in possession liable for waste, though he has aliened.
2. Joint tenant, tenant in common, or parcener liable.
3. Guardian, also.
4. Remedy, by action on the case.

SEC.

5. If waste wanton, treble damages. If waste committed pending suit, land to be put in possession of sheriff. Plaintiff to recover treble damages.

1 R. C. p. 462, ch.
117, § 1, 2.
4 Call 252.
5 Grat. 499.

§ 1. If any tenant of land commit any waste thereon, or after he has aliened it while he remains in possession, unless by special license so to do, he shall be liable to any party injured for damages.

1 R. C. p. 463, § 3,
and p. 358, ch.
96, § 21.

§ 2. If a tenant in common, joint tenant or parcener, commit waste, he shall be liable to his co-tenants, jointly or severally, for damages.

Id p. 463, § 6.

§ 3. If a guardian commit waste of the estate of his ward, he shall be liable to the ward, at the expiration of his guardianship, for damages.

Id §

§ 4. Any person entitled to damages, in any such case, may recover the same in an action on the case. And if it shall be found by the jury that the waste was committed wantonly, judgment shall be for three times the amount of damages assessed therefor.

Id. § 8.

§ 5. If the tenant in possession of any land shall, pending any suit to recover or charge said land, with knowledge of such suit, commit any waste thereon, the court in which the suit is may command the sheriff or other officer to take possession of the land; and if the plaintiff succeed in recovering or charging the land, he may recover, in an action on the case against him who committed the waste, three times the amount of damages assessed therefor.

Title 41.

RENTS, EMBLEMENTS, AND APPORTIONMENT.

CHAP. 138. Of the assignment of lands let to lease; the notice to terminate a tenancy; the recovery of rent, and right of re-entry.

139. Of emblements.

140. Apportionment of money becoming due at fixed periods.

* As to the law of *waste*, as applied in *Virginia*, see 6 Munf. 134; 1 Rand. 258.

CHAPTER CXXXVIII.

OF THE ASSIGNMENT OF LANDS UNDER LEASE; THE NOTICE TO TERMINATE A TENANCY; THE RECOVERY OF RENT, AND RIGHT OF RE-ENTRY.

SEC.

1. } Assignees to have the same rights
2. } as lessors or lessees.
3. } What powers pass to grantee or
4. } devisee without express words;
5. } when attornment not necessary;
6. } when void.
7. What notice to be given to terminate a tenancy; how and on whom served.
8. When tenant deserts the premises, how landlord may enter, &c.
9. } Remedy for rent, and for use and
10. } occupation; who liable for the
11. } rent.
12. When and by whom distress may be made.
13. } On what property; when property
14. } not to be removed without paying one year's rent.
15. When officer may enter by force to levy distress.
16. Distress not void because of irregularity in levying.

SEC.

17. When rent is received otherwise than in money.
18. Proceedings to establish right of re-entry and judgment therefor.
19. } How defendant may redeem the
20. } land from the forfeiture, at law
21. } or in equity.
22. How judgment of forfeiture may be prevented.
23. When suit for re-entry to be brought.
24. In case of actual re-entry, written act of re-entry to be returned, recorded, and certificate thereof published, &c.
25. Fee of clerk for recording and certifying act of re-entry.
26. Within what time after such re-entry, and how, owner of land may be restored to his possession.
27. Limitation of suit, &c. against person in possession by re-entry.

Assignment of lands let to lease.

§ 1. A grantee or assignee of any land let to lease, or of the reversion thereof, and his personal representative or assigns, shall enjoy against the lessee, his heirs, personal representative or assigns, the like advantage, by action or entry, for any forfeiture, or by action, upon any covenant or promise in the lease, which the grantor, assignor or lessor or his heirs, might have enjoyed. 1 R. C. p. 452, ch. 113, § 26.

§ 2. A lessee, his personal representative or assigns, may have against a grantee or alienee of the reversion, or of any part thereof, his heirs or assigns, the like benefit of any condition, covenant or promise in the lease, as he could have had against the lessors themselves, and their heirs and assigns; except the benefit of any warranty, in deed or law. Id. § 27. 4 Leigh 69.

§ 3. In conveyances or devises of rents in fee, with powers of distress and re-entry, or either of them, such powers shall pass to the grantee or devisee without express words. A grant or devise of a rent, or of a reversion or remainder, shall be good and effectual without attornment of the tenant; but no tenant, who, before notice of the grant, or devise,* shall have paid the rent to the grantor, shall suffer any damage thereby. 1 R. C. p. 370, ch. 99, § 32. 2 Call 249.

* In committee of conference the words "or devise," were introduced in two places (in this section) after the word "grant." Though proper in the first place, they seem superfluous in the second.

1 R. C. p. 370,
ch 99, § 33.

§ 4. The attornment of a tenant to any stranger shall be void, unless it be with the consent of the landlord of such tenant, or pursuant to or in consequence of the judgment, order, or decree of a court.

Notice to terminate a tenancy.

1840-41, p. 76, ch.
66, § 1, 2.

§ 5. A tenancy from year to year may be terminated, by either party giving notice in writing, prior to the end of any year, for three months, if it be of land within, and for six months, if of land without a town, of his intention to terminate the same. When such notice is to the tenant, it may be served upon him, or upon any one holding, under him, the leased premises, or any part thereof. When it is by the tenant, it may be served upon any one who, at the time, owns the premises in whole or in part, or the agent of such owner, or according to the common law. This section shall not apply where, by special agreement, no notice is to be given. Nor shall notice be necessary, from or to a tenant whose term is to end at a certain time.

11 Geo. ii. ch. 19,
§ 16, 17.

§ 6. If any tenant, from whom rent is in arrear and unpaid, shall desert the demised premises, and leave the same uncultivated or unoccupied, without goods thereon subject to distress sufficient to satisfy the said rent, the lessor or his agent may post a notice in writing upon a conspicuous part of the premises, requiring the tenant to pay the said rent within one month. If the same be not paid within that time, the lessor shall be entitled to possession of the premises, and may enter thereon, and the right of such tenant thereto shall thenceforth be at an end. But the landlord may recover the rent up to that time.*

How and by whom rent may be recovered.

1 R. C. p. 451,
§ 19, 28, 29.
1826-7, p. 26, ch.
27, § 3.

11 Geo. ii. ch. 19,
§ 14.

1 Wash. 351.
2 Call 249, 253.
1 H. and M. 350.
3 H. and M. 463,
470.
4 H. and M. 161.
1 Munt. 1.
5 Munt. 21.
5 Rand. 571.
4 Leigh 484.
1 Grat. 416.

§ 7. Rent of every kind may be recovered by distress or action. A landlord may also, by action, recover, (where the agreement is not by deed,) a reasonable satisfaction for the use and occupation of lands; on the trial of which action, if any parol demise, or any agreement (not being by deed) whereon a certain rent was reserved, shall appear in evidence, the plaintiff shall not therefore be nonsuited, but may use the same as evidence of the amount of his debt or damages. In any action for rent, or for such use and occupation, interest shall be allowed as on other contracts.

Id.
1 R. C. p. 452, § 26,
28, 30.
3 and 4 Will. iv.
ch. 42, § 37.

§ 8. He to whom rent or compensation is due, whether he have the reversion or not, his personal representative or assignee, may recover it as provided in the preceding section, whatever be the estate of the person owing it, or though his estate or interest in the land be ended. And when the owner of real estate in fee, or holder of a term, yielding him rent, dies, the rent thereafter due shall be recoverable by such

* See *post.* note to § 16, and subsequent sections,

owner's heir or devisee, or such term-holder's personal representative. And if the owner or holder alien or assign his estate or term, or the rent thereafter to fall due thereon, his alienee or assignee may recover such rent.

§ 9. Rent may be recovered from the lessee or other person owing it, or his assignee, or the personal representative of either. But no assignee is to be liable for rent which became due before his interest began. Nothing herein shall impair or change the liability of heirs or devisees for rent, as for other debts of their ancestor or devisor.

§ 10. Rent may be distrained for, within five years from the time it becomes due, and not afterwards, whether the lease be ended or not. The distress shall be made by a constable, sheriff, or other officer, of the county or corporation wherein the premises yielding the rent, or some part thereof, may be, or the goods liable to distress may be found, under warrant from a justice, founded upon an affidavit of the person claiming the rent, or his agent, that the amount of money or other thing to be distrained for, (to be specified in the affidavit,) as he verily believes, is justly due to the claimant, for rent reserved upon contract, from the person of whom it is claimed.

§ 11. The distress may be levied on any goods of the lessee, or his assignee or under-tenant, found on the premises, or which may have been removed therefrom, not more than thirty days. If the goods of such lessee, assignee or under-tenant, when carried on the premises, are subject to a lien, which is valid against his creditors, his interest only in such goods shall be liable to such distress. If any lien be created thereon, while they are upon the leased premises, they shall be liable to distress, but for not more than one year's rent, whether it shall have accrued before or after the creation of the lien. No other goods shall be liable to distress than such as are declared to be so liable in this section.

§ 12. If, after the commencement of any tenancy, a lien be obtained or created by deed of trust, mortgage or otherwise, upon the interest or property in goods on premises leased or rented, of any person liable for the rent, the party having such lien may remove said goods from the premises on the following terms, and not otherwise, that is to say, on the terms of paying to the person entitled to the rent so much as is in arrear, and securing to him so much as is to become due; what is so paid or secured not being more altogether than a year's rent in any case. If the goods be taken under legal process, the officer executing it shall, out of the proceeds of the goods, make such payment of what is in arrear; and as to what is to become due, he shall sell a sufficient portion of the goods on a credit till then, taking from the purchasers bonds with good security, payable to the person so entitled, and delivering such bonds to him. If the goods be not taken under legal process, such payment and security shall be made

and given before their removal. Neither this, nor the preceding section, shall affect any lien for taxes, levies or militia fines.

11 Geo. ii. ch. 19,
§ 7.

§ 13. The officer having such distress warrant, if there be need for it, may, in the day time, break open and enter into any house or close in which there may be goods liable to the distress; and may, either in the day or night, break open and enter into any house or close wherein there may be any goods so liable, which have been fraudulently or clandestinely removed from the demised premises.

Id. § 19.

§ 14. Where distress shall be made for rent justly due, and any irregularity or unlawful act shall be afterwards done, by the party distraining, or his agent, the distress itself shall not be deemed to be unlawful, nor the party making it be therefore deemed a trespasser *ab initio*; but the party aggrieved by such irregularity or unlawful act, may, by action, recover full satisfaction for the special damage he shall have sustained thereby.

1 R. C. p. 449,
§ 12, 13.
1826-7, p. 25, ch.
27, § 1.

§ 15. Where goods are distrained or attached, for rent reserved in a share of the crop, or in any thing other than money, the claimant of the rent, having given the tenant ten days' notice, or if he be out of the county, having set up the notice, in some conspicuous place on the premises, may apply to the court, to which the attachment is returnable, or the court of the county or corporation in which the distress is made. The court having ascertained the value, either by its own judgment, or if either party require it, by the verdict of a jury empaneled without the formality of pleading, shall order the goods distrained or attached to be sold, to pay the amount so ascertained.

*Right of re-entry; when and how exercised.**

§ 16. Any person who shall have a right of re-entry into lands by reason of any rent, issuing thereout, being in arrear, or by reason of the breach of any covenant or condition, may serve a declaration in ejectment on the tenant in possession, where there shall be such tenant, or, if the possession be vacant, by affixing the declaration upon the chief door of any messuage, or at any other notorious place on the premises; which service shall be in lieu of a demand and re-entry; and upon proof to the court by affidavit in case of judgment by default, or upon proof on the trial, that the rent claimed was due, and no sufficient distress was upon the premises, or that the covenant or condition was broken before the service of the declaration, and that the plaintiff had power thereupon to re-enter, he shall recover judgment and have execution for such lands.

* The following sections of this chapter were introduced in the house of delegates, and were taken from the revised statutes of *New York*, vol. 2, p. 505, art. 2, § 30 to 38. They extend, however, to other cases than "the recovery of demised premises for non-payment of rent," to which the *New York* statute was confined. See ante, § 6; 3 Call 491; 3 H. & M. 436.

§ 17. Should the defendant, or other person for him, not pay the rent in arrear, with interest and costs, nor file a bill in equity for relief against such forfeiture, within twelve calendar months after execution executed, he shall be barred of all right, in law or equity, to be restored to such lands or tenements.

§ 18. Any mortgagee or trustee of such lands, not in possession thereof, may, within twelve calendar months after execution executed, pay the rent and all arrears, with interest and costs, or file a bill in equity, for relief against such forfeiture; and thereupon may be relieved against it, on the same terms and conditions as the owner of such lands or tenements would be entitled to.

§ 19. If the owner of such lands, or any person having right or claim thereto, shall, within the time aforesaid, file his bill for relief in any court of equity, he shall not have or continue any injunction against the proceedings at law on the ejectment, unless he shall, within thirty days next after a full and perfect answer filed by the plaintiff in ejectment, bring into court or deposite in some bank within the state, to the credit of the cause, such money as the plaintiff in ejectment shall, in his answer, swear to be due and in arrear, over and above all just allowances, and also, the costs taxed in the suit, there to remain till the hearing of the cause, or to be paid out to the plaintiff on good security, subject to the decree of the court. And in case the bill shall be filed, within the time aforesaid, and after execution executed, the plaintiff shall be accountable for no more than he shall, really and *bona fide*, without fraud, deceit, or wilful neglect, make of the premises from the time of his entering into the actual possession thereof; and if it should be less than the rent payable, then the possession shall not be restored until the plaintiff be paid the sum which the money so made shall fall short of the rent for the time he so held the lands.

§ 20. If any party having right or claim to such lands shall, at any time before the trial in such ejectment, pay or tender to the party entitled to such rent or to his attorney in the cause, or pay into court, all the rent and arrears, with interest and costs, all further proceedings in the ejectment shall cease. If the person claiming the land shall, upon bill filed as aforesaid, be relieved in equity, he shall hold the land as before the proceedings began, without a new lease or conveyance.

§ 21. In case the time for re-entering be specified in the instrument creating the rent, covenant, or condition, the proceedings in ejectment shall not be begun until such time shall have elapsed.

§ 22. Where actual re-entry shall be made, the party by or for whom the same shall be made shall return a written act of re-entry, sworn to by the sheriff or other officer acting therein, to the clerk of the county or corporation wherein the lands or tenements shall be, who shall record the same in the deed book, and shall deliver to the party making the re-entry a

certificate setting forth the substance of such written act, and that the same had been left in his office to be recorded; which certificate shall be published, at least once a week, for two months successively, in some newspaper published in or nearest to such county or corporation; which publication shall be proved by affidavit to the satisfaction of the said clerk, who shall note the fact in the margin of the record book, against the record of the act of re-entry, in the words: "*Publication made and proved according to law. A. B., Clerk;*" and shall return the original act of re-entry to the party entitled thereto. Said written act of re-entry when recorded and the record thereof, or a duly certified copy from such record, shall be evidence, in all cases, of the facts therein set forth.

§ 23. The clerk shall be paid for recording, granting certificate and noting publication, as aforesaid, one dollar and fifty cents, and shall collect and account for the same tax, upon every such act of re-entry offered for record, as shall then be levied by law upon deeds of conveyance.

§ 24. Should the person, entitled to such lands at the time of re-entry made, or having claim thereto, not pay or tender the rent and all arrears thereof, with interest and all reasonable expenses incurred about such re-entry, within one year from the first day of publication as aforesaid, he shall be forever barred from all right, in law or equity, to the said lands. In case any party, having right, shall pay or tender the said rent and arrears with interest and expenses as aforesaid to the party making re-entry, within the time aforementioned therefor, he shall be reinstated in his possession to hold as if the re-entry had not been made.

§ 25. No person who, or those under whom he claims, shall have been possessed of lands by virtue of a re-entry, for the term of two years after the commencement of this act, shall be disturbed therein by suit or otherwise for any defect of proceedings in such entry.

CHAPTER CXXXIX.

OF EMBLEMENTS.

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|--|---|
| 1. Of slaves; lessee of land from tenant for life, or uncertain interest, how long to hold them; how hire or rent paid and apportioned; and rights as to emblements. | 2. Land or slaves employed in farming, when to be continued therein; to whom emblements to go.
3. What emblements go as at common law. |
|--|---|

1 R. C. p. 388,
ch. 104, § 55, 56.

3 Call 75.

§ 1. If there be tenant for life, or other uncertain interest, in slaves, which at the expiration of the life estate, or other uncertain interest, are hired to another, the person hiring may

hold them to the end of the current calendar year, paying hire for the same, and delivering them well clothed ; and the hire shall be apportioned between the tenant for life or other uncertain interest, or his personal representative, and those who succeed to the slaves. If there be tenant for life or other uncertain interest in land which is let to another, the lessee may hold the land to the end of the current year of the tenancy, paying rent therefor ; the rent, if it be reserved in money, shall be apportioned between the tenant for life or other uncertain interest, or his personal representative, and those who succeed to the land. If rent be reserved in kind, it shall be paid to the tenant for life or other uncertain interest, or his personal representative ; and the said tenant or his personal representative, as the case may be, shall pay to those who succeed to the land a reasonable rent in money from the expiration of the life estate or other uncertain interest, to the end of the current year of the tenancy : the rent to be paid to those who succeed to the land, shall be a charge in preference to other claims on the rent received in kind by such tenant or his personal representative. Such lessee shall be entitled as at common law to the emblements growing on the lands at the expiration of the estate for life or other uncertain interest, whether they be severed during the year or not. But where the growing crops are severed after the expiration of the current year of the tenancy, such lessee shall pay a reasonable rent to those who succeed to the land, from the end of said tenancy to the time when the same are severed. If said life estate or other uncertain interest expire before the first of August in any year, the lessee shall permit those who succeed to the land to put in the ground any crop they may desire after that period ; and if any land has been prepared by such lessee previous to that period for the purpose of putting a crop in the ground, those who succeed to the land shall pay a reasonable compensation therefor ; and to the extent that such lessee is deprived of the use of the land by reason of a crop being put in the ground by those who succeed to the land, he shall be paid a reasonable compensation for the use of such land.

§ 2. If any person, having employed in farming or planting land or slaves, whether held for life or any other interest, shall die on or after the first of March, his personal representative may, in his discretion, continue such employment until the last day of December following, and all the emblements which the said representative may sever, before that day, shall be personal assets in his hands, deducting first the taxes and levies on such land or slaves for the year, the cost of tools procured after the decedent's death, and the expense of feeding and clothing the said slaves and their families. If he elect not to continue such employment, he shall dispose of, for the balance of the year, to the best advantage for the estate of the decedent, such land or slaves held by him for life only, and in either case such representative shall, out of the assets,

1 R. C. p. 388, ch.
104, § 53, 54.
3 Call 75.

pay to those entitled in reversion or remainder, a reasonable rent or hire, from the death of his decedent to the said last day of December, and in the case of slaves deliver them well clothed. Such rent or hire shall be chargeable, in preference to all other claims against the estate, on the profits which may arise from such land or slaves after the death of the decedent.

1 R. C. p. 388, ch.
104, § 54.
6 Munt. 514.

§ 3. In all other cases, the right to emblements shall be as at common law.

CHAPTER CXL.

APPORTIONMENT OF MONEY COMING DUE AT FIXED PERIODS.

SEC.

1. Apportionment of rent, money, &c. in case of death of one interested.
2. Remedy of personal representative.
3. When chapter not to apply.

SEC.

4. Apportionment on purchase of part of rent by holder of land or of part of land by holder of rent.

1 R. C. p. 389,
§ 56.
11 Geo. ii. ch. 19,
§ 15.
4 Will. iv. ch. 22.

§ 1. On the determination, by death or otherwise, of the estate or other thing, from or in respect of which any rent, hire or money coming due at fixed periods, issues or is derived, or on the death of any person interested in such rent, hire or money, the person or the personal representative or assignee of the person, who would have been entitled, but for such death or determination to the rent, hire or money coming due at any such period, shall have a proportion thereof, according to the time which shall have elapsed of the time for which the said rent, hire or other money was growing due, including the day of such death or determination, deducting a proportional part of the charges.

Id.

§ 2. For recovering such proportion, the said person, representative or assignee, shall, after such fixed period, have such remedies as he would have had for recovering the whole of such rent, hire or other money, if entitled thereto.

Id.

§ 3. This chapter shall not apply to any case in which it is expressly provided, that no appointment shall take place.

§ 4. Where the holder of a rent shall purchase part of the land out of which the same issues, the rent shall be apportioned, in like manner as if the land had come to him by descent; and where the holder of land, being part of land out of which a rent shall be issuing, shall purchase such rent or part thereof, the rent so purchased shall be apportioned as aforesaid.*

* This section was added in the house of delegates to the chapter as reported by the revisors.

Title 42.

CHAPTER CXLI.

MONEY AND INTEREST.

SEC.

1. } What shall be the money of account; accounts to be kept therein.
2. }
3. In suits for foreign money, its value in the money of account to be fixed.
4. } Legal rate of interest. Contracts,
5. } &c. for more, void.
6. Plea of usury; evidence on issue thereon.

SEC.

7. Relief by bill for discovery of usury.
8. Excess paid over legal interest may be recovered back.
9. Bill by judgment creditor; relief in such case.
10. Relief on bill to injoin sale of property not requiring discovery.
11. Forfeiture for usury, of double the sum loaned, &c.

*Money of account.**

§ 1. The money of account of this state shall be the dollar, cent and mill: all accounts by public officers shall be so kept. 13 Hen. Stat. p. 478, ch. 17, § 2. 2 R. C. p. 66, ch. 192, § 1.

§ 2. No writing shall be invalid, nor the force of any account or entry be impaired, because a sum of money is expressed therein otherwise than in the said money of account.

§ 3. In any suit for a sum of money expressed in any foreign currency or otherwise than in the money of account of this state, the jury, if there be one empaneled for any other purpose, and if not, the court, shall ascertain the value in the said money of account of the sum so expressed, making such allowance for the difference of exchange as shall be just; and the judgment or decree may either be for what may be so ascertained, or for the sum of money expressed as aforesaid to be discharged by the sum so ascertained. 1 R. C. p. 486, ch. 126, § 6. 2 R. C. p. 66, ch. 192, § 2. 2 Wash. 149, 150, 165. 3 Call 557.

Interest.†

§ 4. Legal interest shall continue to be at the rate of six dollars upon one hundred dollars for a year, and proportionably 1 R. C. p. 373, ch. 102, § 1.

* Concerning tobacco as a currency, see ante, p. 400, note to ch. 87. In 1645, the general assembly prescribed the rate at which Spanish silver coins brought into the colony should be taken, and made provision for procuring a coin of copper, in two pences, three pences, six pences and nine pences; the act provided that captain *John Upton* should be mint master-general. See Hen. Stat. vol. 1, p. 308, 9. Subsequent acts on the subject, id. p. 410, ch. 4; p. 397, ch. 4; p. 493, ch. 130; vol. 2, p. 125, ch. 116; vol. 3, p. 502, ch. 10; vol. 4, p. 51; p. 218, ch. 9; vol. 7, p. 575, ch. 11; vol. 8, p. 343, ch. 12, § 2; p. 534, ch. 17; vol. 9, p. 134; vol. 11, p. 117. The act of 1792, in 13 Hen. Stat. p. 477, ch. 17, § 1, prescribed the rates at which certain coins should be received until it should be otherwise regulated by congress. In 1792 congress passed an act establishing a mint, and regulating the coins of the *United States*, 1 *Story's Laws of U. S.* p. 227. Subsequent acts of congress on the subject, id. p. 226, 282, 488, 626, 635, 820; vol. 2, p. 868, 1006, 1032; vol. 3, p. 1599, 1746, 1823, 1922, 1923-4, 2005-6; Sess. Acts of 1833-4, p. 36, ch. 71; p. 64-5, ch. 95, 96; 1836-7, p. 4, ch. 3; 1842-3, p. 48, ch. 69; p. 71, ch. 92; 1845-6, p. 21, ch. 23.

† Former acts in relation to interest 4 Hen. Stat. p. 294, ch. 12, p. 395, ch. 5. 6 Hen. Stat. p. 101, ch. 37. 12 Hen. Stat. p. 337, ch. 55. Nov. 1796, p. 16, ch. 16. 1 R. C. p. 373, ch. 102. Those acts were taken from old statutes of Eng-

for a greater or less sum, or for a longer or shorter time, and no person, upon any contract, shall take for the loan or forbearance of money or other thing above the value of such rate.

1 R. C. p. 373, ch. 102, § 1.

§ 5. All contracts and assurances made directly or indirectly for the loan or forbearance of money or other thing at a greater rate than is allowed by the preceding section, shall be void.

1843-4, p. 54, ch. 70, § 1, 2.

§ 6. Any defendant may plead in general terms that the contract or assurance on which the action is brought was for the payment of interest at a greater rate than is allowed by law, to which plea the plaintiff shall reply generally, but may give in evidence, upon the issue made up thereon, any matter which could be given in evidence under a special replication; under the plea aforesaid, the defendant may give in evidence

land which in that country have been materially modified in modern times. See 58 Geo. iii. ch. 93; 3 & 4 Will. iv. ch. 98, § 7. 5 & 6 Will. iv. ch. 41; 7 Will. iv. and 1 Vict. ch. 80; 2 & 3 Vict. ch. 37, p. 271; which last statute has been continued by the statutes of 3 & 4 Vict. p. 429, ch. 83; 4 & 5 Vict. ch. 54; 6 & 7 Vict. p. 363, ch. 45; and 8 & 9 Vict. p. 1085, ch. 102.

In a note, p. 710 to 714 of their reports, the revisors stated the purport of the modern English statutes, and also cited the statutes of other states in the Union to shew that the old rule, under which a man who lent a hundred dollars at an interest of a dollar more for a year than could be recovered without contract was to lose not only that dollar but the hundred which he actually parted with, was now very generally exploded: they recommended another rule as better sustained by the enlightened opinion of modern times, more equitable, better calculated to diminish litigation, and conducing more to the welfare of the state; the sections proposed by them and approved by the committee on revision were as follows:

“§ 4. Legal interest shall continue to be at the rate of \$6 upon \$100 for a year and proportionably for a greater or less sum or for a longer or shorter time, except in cases in which a greater rate is allowed by law.

§ 5. If a contract or assurance be for the payment, directly or indirectly, for the loan or forbearance of any money or other thing of interest at a greater rate than is allowed by the preceding section or some other chapter of this act, it shall be deemed for an illegal consideration as to the excess beyond the principal and the interest so allowed, unless the amount or rate of interest be truly stated in writing in the contract or assurance, and be not more than the rate of \$8 upon \$100 for a year; in which case the interest so stated shall be legal.

§ 6. Any borrower may file a bill in equity against the lender and compel him to discover upon oath the money or thing really lent, and all bargains, contracts or shifts relative to such loan, and the interest or consideration for the same; and if it appear that there was any such illegal consideration, the lender shall recover only his principal money, with interest at the rate of \$6 upon \$100 for a year, and pay costs.

§ 7. If such excess be paid, the party paying the same may, in a suit brought within one year after such payment, recover it back from the person with whom the contract was made, or to whom the assurance was given upon such illegal consideration; it may be so recovered from the said person, notwithstanding the payment of the excess may have been to his endorsee or assignee.

§ 8. Nothing in this chapter shall be deemed to authorize any bank, whether it be of circulation or a savings bank, to take any other or greater interest than is allowed by its charter.”

In the legislature these five sections were struck out and the last seven sections of this chapter adopted in lieu thereof; and in lieu also of § 6 of ch. 172, as reported by the revisors.

One effect of this legislation is to render as important as ever the nice distinctions as to what is and what is not usury. Cases involving this question are reported in 1 Wash. 1; 1 Call 62; 2 Call 110, 430; 4 Call 304; 6 Call 211; 2 Munf. 424, 303; 5 Munf. 187; 6 Munf. 433, 472, 541; Gilm. 42; 2 Rand. 109; 4 Rand. 406; 5 Rand. 132, 333; 1 Leigh 147; 3 Leigh 577; 4 Leigh 581; 5 Leigh 251; 6 Leigh 517; 7 Leigh 26, 501; 8 Leigh 93, 238, 330; 9 Leigh 556; 12 Leigh 166; 2 Grat. 372.

any fact shewing or tending to shew, that the contract or assurance, or other writing upon which the action was brought, was for an usurious consideration.

§ 7. Any borrower of money, or other thing, may exhibit a bill in equity against the lender and compel him to discover, upon oath, the money or thing really lent, and all bargains, contracts or shifts relative to such loan and the interest or consideration of the same; and if it appear that more than lawful interest was reserved, the lender shall recover only his principal money or other thing without interest, and pay the costs of suit.

1 R. C. p. 374, § 3.
6 Munf. 541.
1 Rand. 172.
4 Rand. 415.
1 Leigh 147, 453.
8 Leigh 93.
11 Leigh 113.

§ 8. If an excess beyond the lawful interest be paid in any case, the person paying the same may, in a suit brought within one year thereafter, recover it from the person with whom the contract was made, or to whom the assurance was given: and it may be so recovered from such person notwithstanding the payment of the excess be made to his endorsee or assignee.

1 R. C. p. 374, § 2, 3.

5 Leigh 478.

§ 9. Any judgment creditor who apprehends that he is in danger of loss, by reason of usurious dealings on the part of his debtor, may exhibit his bill in equity, verified by affidavit, against the party with whom the dealings were had, and compel him to discover, on oath, all bargains, contracts, or shifts relative to such dealings; and if it appear that more than legal interest has been received, the excess above that rate, or so much thereof as may be necessary, shall be applied to the satisfaction of the plaintiff's demand. Such bill shall be filed within five years after the receipt of the illegal interest.

§ 10. Upon a bill, requiring no discovery of the defendant, but praying an injunction to prevent the sale of property conveyed to secure the repayment of a sum of money or other thing borrowed at usurious interest, the court shall cause an issue to be made and tried at its bar by a jury, whether or no the transaction be usurious; on the trial of such issue, neither the bill nor the answer shall be given in evidence. If the jury find the transaction usurious, then the same relief shall be given, as if the party claiming under the conveyance had resorted to the court to make his claim available.* But the court may grant new trials as in other cases.

2 Munf. 407.
1 Leigh 499.
2 Leigh 626.
8 Leigh 93.
3 Grat. 173.

§ 11. If a person take, for the loan or forbearance of money or other thing, interest at a greater rate than is allowed by law, he shall forfeit double the value of such money or other thing, and the informer shall have one-half of what is so forfeited.

1 R. C. p. 374, § 2.
2 Va. Cas. 471.

* See *post*. note to § 2 of ch. 142.

Title 43.

CONTRACTS.

CHAP. 142. Of dealings with students; and gaming.

143. When written evidence is required to maintain actions; and of scrolls by way of seal.

144. Of bills, notes, bonds, assignments, and other writings.

145. Of partners, factors and agents; and the action of account.

146. For the relief of sureties.

CHAPTER CXLII.

OF DEALINGS WITH STUDENTS; AND GAMING.

SEC.

1. What dealing with students prohibited.

2. Gaming contracts void.

3. } How money or property lost at
gaming may be recovered back;
4. } winner discharged from other
forfeitures.

SEC.

5. When other person than loser may recover treble the value of such money or property.

1838, p. 29, ch.
21, § 1.
1841-2, p. 21, ch.
21.

§ 1. If any money be lent or advanced, or any thing be sold or let to hire on credit, to or for the use of any student or pupil, under twenty-one years of age, at the *Virginia* military institute, university of *Virginia*, or any incorporated college in this state, without the previous permission in writing of his parent or guardian, or the authorized officers of such institution, nothing shall be recovered therefor, and there shall moreover be forfeited to the institution twenty dollars, and the amount or value of such money or other thing. Where such selling, letting, lending or advancing is by an agent, such forfeiture shall be by his principal, unless the principal shall, within ten days after he has knowledge or information of the selling, letting, lending or advancing, give notice in writing of the date, nature and amount thereof to the president or other head of the institution, in which case the forfeiture shall be by the agent. This section shall not apply to a person selling or letting in expectation of immediate payment, if he shall within ten days thereafter give notice in writing of the date, nature, or amount of the sale or letting, to such president or other head.

1 R. C. p. 561, ch.
147, § 1, 2.

1 Wash. 296, 389.
2 H. and M. 80.
5 Munf. 223.
2 Grat. 219.

§ 2. Every contract, conveyance or assurance, of which the consideration, or any part thereof, is money, property or other thing won, or bet, at any game, sport, pastime or wager, or money lent or advanced at the time of any gaming, betting or wagering, to be used in being so bet or wagered, (when the person lending or advancing it knows that it is to be so used,) shall be void.*

* Where part of a bond is on a good and part on a gaming consideration, see 3 Rand. 214; in such case there is no rule by statute like that adopted as to usury by § 10 of ch. 141, ante, p 577.

§ 3. If any person shall lose to another, within twenty-four ^{1 R. C. p. 561, 2, § 2, 3.} hours, seven dollars or more, or property of that value, and shall pay or deliver the same, such loser may recover it back from the winner by suit,* according to the amount or value, brought within three months after such payment or delivery; it may be so recovered from the winner, notwithstanding the delivery was to his endorsee, assignee or transferee.

§ 4. Such loser may file a bill in equity against such winner, who shall answer the same, and upon discovery and repayment of the money or property so won, or its value, such winner shall be discharged from any forfeiture or punishment which he may have incurred for winning the same.

§ 5. If the party losing the money, or property mentioned in the third section of this chapter, shall not sue for the same, within three months from the time of the payment or delivery thereof, and recover back such money or property, any other person may sue the winner for, and recover from him, treble the value thereof. One half of what is so recovered shall be for himself, and the other half for the commonwealth.

CHAPTER CXLIII.

WHEN WRITTEN EVIDENCE IS REQUIRED TO MAINTAIN ACTIONS; AND OF SCROLLS BY WAY OF SEAL.

SEC.

1. When written evidence required.

SEC.

2. When a scroll is good by way of seal.

§ 1. No action shall be brought in any of the following cases: ^{1840-41, p. 78, ch. 69.}

First. To charge any person upon or by reason of a representation or assurance concerning the character, conduct, credit, ability, trade or dealings of another, to the intent or purpose that such other may obtain thereby credit, money or goods; or, ^{9 Geo. iv. ch. 14, § 6. 3 Rand. 410.}

Secondly. To charge any person upon a promise made, after full age, to pay a debt contracted during infancy, or upon a ratification after full age of a promise or simple contract made during infancy; or, ^{1838, p. 74, ch. 95, § 4. 9 Geo. iv. ch. 14, § 5.}

Thirdly. To charge a personal representative upon a promise to answer any debt or damages out of his own estate; or, ^{1 R. C. p. 372, ch. 101, § 1. 29 Car. ii. ch. 3, § 4.}

Fourthly. To charge any person upon a promise to answer for the debt, default or misdoings of another; or, ^{2 Call 218, 258. 2 H. and M. 603. 3 H. and M. 144. 1 Munf. 510.}

Fifthly. Upon any agreement made upon consideration of marriage; or, ^{3 Munf. 59. 4 Munf. 77, 273. 6 Munf. 83. 6 Rand. 509, 605.}

* The words "or warrant" were casually omitted here; but the omission is not material; see post, ch. 150, § 1.

† The words "payment or" casually omitted here.

6 Leigh 16, 85,
495.
7 Leigh 165.
9 Leigh 153, 387.
10 Leigh 114, 155.
12 Leigh 565.

Sixthly. Upon any contract for the sale of real estate,* or the lease thereof for more than a year; or,

Seventhly. Upon any agreement that is not to be performed within a year;

Unless the promise, contract, agreement, representation, assurance or ratification, or some memorandum or note thereof, be in writing, and signed by the party to be charged thereby, or his agent. But the consideration need not be set forth or expressed in the writing; it may be proved (where a consideration is necessary) by other evidence.

1 R. C. p. 510,
§ 94.
1 Wash. 42, 170.
2 Wash. 63.
1 Munf. 487.
4 Munf. 442.
2 Rand. 446.
2 Leigh 195.
7 Leigh 301.
9 Leigh 511.
4 Grat. 283.

§ 2. Any writing, to which the person making it shall affix a scroll by way of seal, shall be of the same force as if it were actually sealed.

CHAPTER CXLIV.

OF BILLS, NOTES, BONDS, ASSIGNMENTS AND OTHER WRITINGS.

SEC.

1. General and qualified acceptances.
When presentment necessary at place specified for payment.
2. } When bill to be presented and
to } protested; and notice of dis-
6. } honor given.
7. What notes, bills, &c. negotiable.
8. Of what protest is evidence.
9. Damages on bills.

SEC.

10. } On what writings action of debt
11. } may be brought, and against
whom.
12. Writing payable to a dead person.
13. Writing binding persons jointly.
14. } Assignees may sue in their own
15. } name; how assignee may sue
16. } assignor. Jurisdiction in equity.

Of bills and notes.

1 and 2 Geo iv.
ch. 78.

5 Leigh 522.
10 Leigh 512.

§ 1. If a person accept a bill of exchange, payable at the house of a banker or other place, without further expression in his acceptance, such acceptance shall be deemed a general acceptance, and the presentment of the bill for payment may be either at such place, or as it might have been if no such place had been specified in the acceptance. If an acceptor shall, in his acceptance, express that he accepts the bill, payable at a banker's house or other place only, and not otherwise or elsewhere, such acceptance shall be deemed a qualified acceptance, and in such case the presentment of the bill for payment shall be at the place specified in such qualified acceptance. But as against the maker of a note or the acceptor of a bill, whether the acceptance be general or qualified, it shall not be necessary to aver or prove presentment for

* As to the difference between the *English* statute of 29 Car. 2, ch. 3, § 7, and the *Virginia* statute, and the operation of our statute in respect to resulting trusts, see 7 Leigh 566. The *English* statute contains likewise provisions as to contracts for the sale of goods which are not in the *Virginia* statute. Concerning sales of goods and stoppage *in transitu*, see 5 Munf. 34, and 6 Rand. 473. As to the principles which govern a court of equity in decreeing specific execution of a parol contract for land, in part performed, see 3 Rand. 239.

payment at the time or place specified in the note, bill or acceptance. Such maker or acceptor may, however, set up, as a matter of defence, any loss sustained by him, by reason of the failure to make such presentment.

§ 2. If a bill of exchange, wherein the drawer shall have expressed that it is to be payable in any place other than that by him mentioned therein to be the residence of the drawee, shall not, on the presentment thereof for acceptance, be accepted, such bill may, without further presentment to the drawee, be protested for non-payment in the place in which it shall have been, by the drawer, expressed to be payable, unless the amount thereof be paid to the holder on the day on which the bill would have become payable, had it been duly accepted.

§ 3. A bill or note which becomes due on a Sunday shall be payable and may be protested on the preceding day, and a bill or note which becomes due on a Christmas day, or the first day of January or fourth day of July, shall be payable and may be protested on the preceding day, or if that be Sunday, then on the preceding Saturday.

§ 4. When a bill or note is protested, either under the preceding section or otherwise, on the day preceding any Sunday, Christmas day, first day of January or fourth day of July, notice of the dishonour thereof need not be given until the first day afterwards, which is not Sunday, Christmas day, or the first day of January or fourth day of July.

§ 5. When a bill of exchange is accepted *supra* protest for honour, or has a reference thereon in case of need, it shall not be necessary to present such bill to such acceptor for honour, or to such referee, until the day following that on which such bill shall become due, and if the place of address on such bill of such acceptor for honour, or of such referee, shall be in any town or place other than in the town or place where such bill is therein made payable, then it shall not be necessary to forward such bill for presentment for payment to such acceptor for honour or referee, until the day following that on which such bill shall become due.

§ 6. If the day following that on which such bill shall become due shall happen to be a Sunday or Christmas day, or the first day of January, or fourth day of July, then it shall not be necessary to present it or forward it for presentment for payment to such acceptor for honour or referee until the first day afterwards, which is not Sunday or Christmas day, or the first day of January, or fourth day of July.

§ 7. Every promissory note, or check for money, payable in this state at a particular bank, or at a particular office thereof for discount and deposit, or at the place of business of a savings institution or savings bank, and every inland bill of exchange, payable in this state, shall be deemed negotiable, and may, upon being dishonoured for non-acceptance or non-payment, be protested, and the protest be in such case evidence

2 and 3 Will. iv.
ch. 98.

39 and 40 Geo. iii.
ch. 42.
7 and 8 Geo. iv.
ch. 15.

Id.
6 Munf. 487.
4 Rand. 164, 553.
4 Leigh 37.
7 Leigh 179.
8 Leigh 164.

6 and 7 Will. iv.
p. 402, ch. 58, § 1.

Id. § 2.

1 R. C. p. 483, § 2.
6 Munf. 316.
2 Rand. 247.

of dishonour, in like manner as in the case of a foreign bill of exchange.

1828-9, p. 27, ch.
24, § 2.
1833-4, p. 75, ch.
62, § 1.

7 Leigh 180.
2 Grat. 534.

§ 8. The protest both in the case of a foreign bill, and in the other cases mentioned in the preceding section, shall be *prima facie* evidence of what is stated therein, or at the foot, or on the back thereof, in relation to presentment, dishonour and notice thereof.

1 R. C. p. 483, ch.
125, § 1; p. 485,
ch. 126, § 1.
1828-9, p. 27, ch.
24, § 1.

§ 9. When a bill of exchange drawn or endorsed within this state is protested for non-acceptance or non-payment, there shall be paid by the party liable for the principal of such bill, in addition to what else he is liable for, damages upon the principal, at the rate of three *per centum* if the bill be payable out of *Virginia* and within the *United States*, and at the rate of ten *per centum* if the bill be payable without the *United States*.

On what writings, and how, action of debt brought.

1 R. C. p. 484, § 4.
2 Va. Cas. 521.
2 Leigh 198.
8 Leigh 50, 514.

§ 10. An action of debt may be maintained upon any note or writing by which there is a promise, undertaking or obligation to pay money, if the same be signed by the party who is to be charged thereby, or his agent.

1 R. C. p. 485, § 2.
1836-7, p. 66, § 6;
p. 67, § 9.
1845-6, p. 117, ch.
156.

3 H. & M. 394.
2 Munf. 302.
8 Leigh 50.
3 Rand. 316.

§ 11. Upon any such note* which on its face is payable at a particular bank, or at a particular office thereof for discount and deposit, or the place of business of a savings institution or savings bank, and upon any bill of exchange, whether such note or bill be payable in or out of this state, if the same be protested, an action of debt may be maintained and judgment given jointly against all liable by virtue thereof, whether drawers, endorsers, or acceptors, or against one or any intermediate number of them, for the principal and charges of protest, with interest thereon from the date of such protest; and in the case of such bill, for the damages also.

Writing payable to one dead at the time.

1819-20, p. 24, ch.
28, § 2.
3 Leigh 392.

§ 12. A bond, note or other writing to a person or persons who, or some of whom are dead at the time of its execution, shall be as valid as if such person or persons were then alive, and may be proceeded on in the name of the personal representative of such person, or the survivors or survivor, or of the representative of the last survivor of such persons.

Writing binding persons jointly; assignments.

1 R. C. p. 359, ch.
98, § 3.

Wash. 136.
2 Call 527.
3 Call 269, 521.
2 H. & M. 124.
6 Rand. 182.
3 Leigh 553.
7 Leigh 601.
8 Leigh 689.

§ 13. The representative of one bound with another, either jointly or as a partner, by judgment, bond, note or otherwise, for the payment of a debt, or the performance or forbearance of an act, or for any other thing, and dying in the lifetime of the latter, may be charged in the same manner as such repre-

* Writing under seal not deemed a note. 4 Rand. 253.

sentative might have been charged, if those bound jointly or as partners had been bound severally as well as jointly, otherwise than as partners.

§ 14. The assignee of any bond, note or writing not negotiable, may maintain thereupon any action in his own name which the original obligee or payee might have brought, but shall allow all just discounts, not only against himself, but against the assignor, before the defendant had notice of the assignment.* 1 R. C. p. 484, ch. 126, § 5.

§ 15. Any such assignee may recover from any assignor of such writing; but only joint assignors shall be joined as defendants in one action, and a remote assignor shall have the benefit of the same defence as if the suit had been instituted by his immediate assignee.† Id. § 6.

§ 16. A court of equity shall not have jurisdiction of a suit upon a bond, note or writing, by an assignee or holder thereof, unless it appear that the plaintiff had not an adequate remedy thereon at law. 1820-21, p. 31, ch. 31, § 1. 6 Munf. 23. 4 Rand. 392.

CHAPTER CXLV.

OF PARTNERS, FACTORS AND AGENTS; AND THE ACTION OF ACCOUNT.

SEC.		SEC.	
1.	} Limited partnership; for what and how formed; names of partners, nature of business, &c., to be specified in a writing, to be recorded and published.	10.	What preferences not to be valid.
4.		11.	How voluntary dissolution of the partnership may be made.
5.		12.	How suits respecting business of the partnership prosecuted.
6.		13.	Factors and agents to disclose names of their principals; property used in business by any person under his own name, to be deemed his property.
7.	} What dissolves it, and what is to be done on a renewal.	14.	Of the action of account.
8.			
9.	How the business to be conducted.		
	When capital not to be withdrawn, nor dividends made.		
	No partner to be paid in case of insolvency of the firm, until creditors paid.		

Of limited partnerships.

§ 1. Limited partnerships for the transaction of mercantile, mechanical or manufacturing business within this state, and not for the purpose of banking, brokerage or making insurance, may be formed upon the terms, and subject to the conditions and liabilities, prescribed in this chapter. 1836-7, p. 41, ch. 67, § 1.

§ 2. Any such partnership may consist of one or more persons as general partners, who shall be responsible as general Id. § 2.

* As to the liability of an assignor, and the rights of the assignee, see 2 Wash. 219, 233, 255; 1 Call 227, 483, 497; 4 Call 492; 5 Call 16, 61, 78; 2 H. & M. 105, 113, 536; 1 Munf. 533; 3 Munf. 68; 5 Munf. 388, 456; 6 Munf. 315, 391, 448; 4 Rand. 266; 5 Rand. 31; 4 Leigh 452, 590; 6 Leigh 135, 230, 386, 534; 9 Leigh 6, 473.

† Id.

partners now are, and of one or more persons as special partners, who, contributing to the common stock a specific sum, in actual cash payment, as capital, shall not be personally liable for any debts of the partnership, except as hereinafter mentioned.

1836-7, p. 41, ch.
67, § 4, 7.

§ 3. The persons forming any such partnership shall make, and severally sign a paper, which shall state the name and place of residence of each partner, the name or firm under which the partnership is to be conducted, who are general, and who are special partners, the sum which each special partner contributes, the general nature of the business to be transacted, the place or places of the said business, and the duration of the partnership. One or more of the general partners shall also make oath that each sum, so stated to be contributed, has been actually paid in cash.

Id. § 5 to 9.

§ 4. No such partnership shall be deemed to be formed, until such paper and a certificate of such oath, or a certified copy thereof, shall be admitted to record as to each person signing the same, in the court or the clerk's office of the court of each county or corporation, in which may be the place or places of the said business, upon such acknowledgment or proof as is sufficient in the case of a power of attorney, nor until such paper and certificate, or a copy thereof, be published for six successive weeks, in a newspaper, (if such there be,) printed in every such county or corporation. And in case any statement in such paper or certificate be false, the special shall be liable as general partners.

Id. § 11, 12.

§ 5. The partnership shall be deemed to be dissolved, when there is an alteration in the name of the partners, in the nature of the business, in the capital thereof by a diminution of it otherwise than by losses or in the ordinary course of business, or an alteration in any other matter specified in such paper; and if the partnership be thereafter carried on, it shall be deemed a general partnership, unless there be such renewal as is hereinafter mentioned.

Id. § 11.

§ 6. Upon every renewal of a limited partnership, whether because of such alteration, or to continue the partnership beyond the time originally fixed for its duration, the persons renewing the same shall make and severally sign a paper with such statements as the third section prescribes, except only that, where there is no alteration in the capital, the sum contributed by each special partner is to be stated to have been contributed at the time the partnership was originally formed, and the year of its formation is to be mentioned. And the partnership shall not be deemed to be renewed, under this section, until the said paper, or a copy thereof, and a certificate, such as is mentioned in the fourth section, shall be admitted to record, and published as prescribed by that section.

Id. § 3, 13, 17.

§ 7. The business of the partnership shall be conducted under a firm, in which the names of the general partners shall be inserted, without the names of the special partners, and

without the addition of the word "*company*," or any other general term. The general partners only shall be authorized to make a contract, (with others than partners,) respecting the concerns of the partnership, or to transact its business. If the name of any special partner be used in such firm, with his privity, or if he shall make any such contract, or transact business for the partnership as agent or otherwise, he shall be liable as general partner. But this section shall not prevent him from examining into the state of the business, and advising as to its management.

§ 8. During the continuance of the partnership, no part of any sum, which any special partner may have contributed to the stock, shall be withdrawn, nor shall any division of interest or profits be made, so long as the stock is reduced below the sum stated in the paper before mentioned. If any of the stock be so withdrawn or reduced, the partner receiving the same shall be responsible for what he may have so received, with interest thereon from the time of receiving it, or for so much thereof as may be necessary to pay such partnership debts as may remain unpaid, after applying thereto the partnership effects. ^{1836-7, ch. 67, § 15, 16.}

§ 9. In case of the insolvency of the partnership, no special partner shall be paid as a creditor of the firm, until all its other creditors are satisfied. ^{Id. § 23.}

§ 10. No sale, assignment or transfer of the property or effects of any such partnership, or of any interest therein, nor any lien or incumbrance thereon, by judgment or otherwise, shall be valid, if made or created by such partnership, at a time when it has not sufficient property or effects to pay all its debts, for the purpose of giving a preference to one or more of its creditors over any other creditor; or by any partner, whether general or special, at a time when he has not sufficient property or effects to pay all his debts, or in contemplation that the partnership may not have sufficient property or effects to pay its debts, for the purpose of giving a preference over creditors of the partnership to one or more creditors, whether of his own or the partnership. ^{Id. § 20, 21. 8 Leigh 415.}

§ 11. No dissolution of a limited partnership shall take place, except by operation of law, before the time specified in the paper before mentioned, unless a notice of such dissolution shall be recorded in the court or courts in which the said paper was recorded, and be published for six successive weeks in a newspaper (if such there be) in each of the counties and corporations in which may have been the place or places of business of the partnership. ^{1836-7, p. 41, ch. 67, § 24.}

§ 12. All suits respecting the business of any partnership formed or renewed as hereinbefore prescribed, shall be prosecuted by and against the general partners only, except in those cases wherein it is provided in this chapter that a special partner shall be liable as a general partner, in which cases all partners so liable may join or be joined in such suits. A ^{Id. § 14.}

special partner shall also be liable to, and be suable by, the firm for debts contracted with it, in the same manner as if he were not a partner.

Factors and agents.

1839, p. 45, 6,
ch. 72.

§ 13. If any person shall transact business as a trader, with the addition of the words "*factor*," "*agent*," "*and company*," or "*and co.*," and fail to disclose the name of his principal or partner, by a sign, in letters easy to be read, placed conspicuously at the house wherein such business is transacted, and also by a notice published for two weeks in a newspaper (if any) printed in the town or county wherein the same is transacted, or if any person transact such business in his own name, without any such addition, all the property, stock and choses in action, acquired or used in such business, shall, as to the creditors of any such person, be liable for the debts of such person. This section shall not apply to a person transacting such business under a license to him as an auctioneer or commission merchant.

Action of account.

1 R. C. p. 509,
§ 81.
7 Leigh 721.

§ 14. An action of account may be maintained against the personal representative of any guardian, bailiff or receiver, and also by one joint tenant or tenant in common, or his personal representative, against the other as bailiff, for receiving more than comes to his just share or proportion, and against the personal representative of any such joint tenant or tenant in common.

CHAPTER CXLVI.

FOR THE RELIEF OF SURETIES.

SEC.

1. } How sureties in official bonds re-
2. } lieved.
3. Officer failing to give new bond to be removed from office.
4. Surety may require creditor to sue.
5. Effect of failure to sue.

SEC.

6. Surety's remedy against principal for money paid.
7. Surety confessing judgment, &c. without notice to principal; or principal knowing of suit and not defending it.
8. Remedy of one surety against another.

1822-3, p. 38, ch.
36, § 1.
1841-2, p. 53, § 1.

§ 1. When the surety (or his personal representative) of any officer, required to give an official bond, shall petition the court by which the bond is taken, or in which, or the clerk's office of which, it is recorded, or the circuit court of the county or corporation in which (where the bond is not taken

by or filed in any court or clerk's office) the officer resides, to be relieved from the suretyship, such court shall, on proof of reasonable notice of his intended motion, require such officer to give a new bond, in the same manner as if none had been given by him.

§ 2. Upon such new bond being given, approved and accepted, according to law, the sureties in the former bond, and their estates, shall be discharged from all liability for any breach of duty committed by such officer, after that time. 1822-3, id § 2.
1841-2, p 53, § 1.

§ 3. If any such officer, being so required, shall fail to give such new bond within the time required by the court, he shall be deemed to have been guilty of a breach of official duty, and shall be forthwith removed from office. 1d.

§ 4. The surety or guarantor, or endorser, (or his personal representative,) of any person bound by any contract, may, if a right of action has accrued thereon, require the creditor, or his personal representative, by notice in writing, forthwith to institute suit thereon; and if he be bound in a bond with collateral condition, or for the performance of some collateral undertaking, he shall also specify in such requisition the breach of the condition or undertaking for which he requires suit to be brought. 1 R. C. p. 461,
§ 6, 7, 8.
1843-4, p. 47, § 5.
3 Call 69.
5 Leigh 153.
9 Leigh 164.

§ 5. If such creditor or his representative shall not, in a reasonable time after such requisition, institute suit against every party to such contract, who is resident in this state and not insolvent, and prosecute the same with due diligence to judgment and by execution, he shall forfeit his right to demand of such surety or his estate, and all his co-sureties and their estates, the money due by any such contract for the payment of money, or the damages sustained by any breach of the collateral condition or undertaking specified as aforesaid. But the conditions, rights and remedies against the principal debtor, shall remain unimpaired thereby. 1d.

§ 6. If any person liable as bail, surety, guarantor or endorser, or any sheriff liable for not taking sufficient bail, or the heir or personal representative of any so liable, shall pay, in whole or in part, any judgment, decree or execution rendered or awarded on account of such liability, the person having right of action for the amount so paid may, by motion in the court in which the said judgment, decree or execution was rendered or awarded, obtain judgment or decree against any person against whom such right of action exists, for the amount so paid, with interest from the time of payment, and five *per centum* damages on said amount.* 1 R. C. p. 460, § 1,
4, 5; p. 500, § 48.
1826-7, p. 27, ch.
28, § 5.
1 Call 443.
5 Munf. 419.
6 Munf. 387.
3 Leigh 609.

§ 7. If any such surety, (other than bail,) or his heir or personal representative, shall confess judgment, or suffer judgment to go against him by default, without giving notice to his principal, (if he be a resident of this state,) or his personal repre- 1 R. C. p. 461,
§ 3.
3 Rand. 490.

* As to surety's right of substitution, see 4 Rand. 438; 10 Leigh 206, 382, 394; 11 Leigh 83, 309; 12 Leigh 264, 387, 573; 1 Rob. 461; 2 Grat. 178, 419; 4 Grat. 181.

sentative, to defend the suit, and, after such principal offers to defend the suit, and tenders counter security, approved by the court in which the suit is pending, the said principal, or his heirs or representatives, may have the benefit of every defence against the motion or suit of such surety, or his representatives, against him, that he might have had against the creditor. And in all cases in which any principal debtor or his representative or heirs, knowing of the pendency of any suit against his surety, or the heir or personal representative of such surety, shall not offer to defend such suit, he shall be precluded from making any defence to the claim of the surety, which he might have made against the suit of the creditor.

1 R. C. p. 461,

§ 2.

3 Munf. 484.

5 Leigh 414, 552.

§ 8. If the principal debtor be insolvent, any surety or his personal representative, against whom a judgment or decree has been rendered on the contract for which he was surety, may obtain a judgment or decree by motion, in the court in which the former judgment or decree was rendered, against any co-surety, or his personal representative, for his share, in law or equity, of the amount for which the first mentioned judgment or decree may have been rendered; and if the same has been paid, for such share of the amount so paid, with interest thereon from the time of such payment.

Title 44.

CARRIERS; AND ACTIONS FOR INJURIES.

CHAP. 147. Of common carriers.

148. Of actions for injuries.

CHAPTER CXLVII.

OF COMMON CARRIERS.*

1 Will. iv. ch. 68,
§ 5.

§ 1. Where common carriers are not incorporated, any one or more of them may be sued by his or their name or names only, to recover damages for loss or injury to any parcel, package or person, and such suit shall not abate for the want of joining any of his co-proprietors or co-partners.

* The revisors reported, under this head, a chapter of seven sections, regulating the liability of common carriers; taken from 1 Will. iv. ch. 68, with some modifications. All these sections except the one which now constitutes the chapter, although approved by the committee of revision, were struck out by the legislature. As to liability of carriers, see 3 Munf. 239.

CHAPTER CXLVIII.

OF ACTIONS FOR INJURIES.

SEC.

1. Action for seduction.
2. Action for insulting words.
3. Action for wrongful distress, &c.
4. Action of replevin.

SEC.

5. Action for slaves carried off and lost.
6. Action for damages from the violation of a statute.
7. Action of trespass on the case.

§ 1. An action for seduction may be maintained, without any allegation or proof of the loss of the service of the female, by reason of the defendant's wrongful act. 6 Munf. 587.
Gilm. 33.

§ 2. All words which, from their usual construction and common acceptation, are construed as insults and tend to violence and breach of the peace, shall be actionable. No demurrer shall preclude a jury from passing thereon. 1 R. C. p. 584, ch. 157, § 8.
1830-31, p. 105, ch. 37, § 8.
See post. ch. 176, § 44.

§ 3. If property be distrained for any rent not due, or attached for any rent not accruing, or taken under any attachment sued out without good cause, the owner of such property may, in an action against the party suing out the warrant of distress or attachment, recover damages for the wrongful seizure, and also, if the property be sold, for the sale thereof. 1 R. C. p. 447, ch. 113, § 5.
1845-6, p. 74, ch. 105, § 7.
2 Leigh 447.
3 Leigh 561.
7 Leigh 660.

§ 4. No action of replevin shall be brought, after the commencement of this chapter, except for a cause of action which arose before such commencement, and for which it was capable of being brought at the time the same arose. 1822-3, p. 31, ch. 29, § 9.
See post. ch. 189, § 1, 4; ch. 152, § 2, et seq.; ch. 151, § 21, 22, 24.

§ 5. Any railroad company in whose car or vehicle, and any master or skipper of a vessel in which, a slave shall be transported or carried, without the authority of the owner of such slave, or his agent or guardian, shall be liable to such owner for the value of such slave, if he be thereby lost, and whether he be recovered or not, for such reasonable expenses as may be incurred by the owner, to effect such recovery. 3 Rand. 448.
1 R. C. p. 432, § 52.
1836-7, p. 101, ch. 117.

§ 6. Any person injured by the violation of any statute may recover from the offender such damages as he may sustain by reason of the violation, although a penalty or forfeiture for such violation be thereby imposed,* unless the same be expressly mentioned to be in lieu of such damages.

§ 7. In any case in which an action of trespass will lie, there may be maintained an action of trespass on the case. 6 Call 44.
2 H. and M. 423.
6 Munf. 27.
2 Rand. 440.
4 Grat. 151.

* As to the remedies of the commonwealth for a penalty given by statute, see ante, p. 227, ch. 43, § 1. That an action of debt will lie for a penalty given to an individual, see Bac. Abr. tit. *Statute*, letter L.; 8 Leigh 479.

Title 45.

CHAPTER CXLIX.

LIMITATION OF SUITS.

SEC.		SEC.	
1.	Limitation of entry on, or action for, land.	11.	Of actions not before specified.
2.	Right not saved by claim.	12.	Actions on judgments, &c., of another state.
3.	Further time allowed infants, &c.	13.	Suits to avoid voluntary deeds, &c.
4.		14.	To repeal a grant.
5.	Limitation of personal actions generally.	15.	Saving in case of infants, &c., and persons dead when right accrues.
6.	On bonds of fiduciaries.	16.	
7.	Where new promise in writing.	17.	Saving to plaintiff, where suing was prevented by defendant.
8.	Effect of promise of personal representative or joint contractor.	18.	Further time given, when suit abates, or is defeated on ground not affecting the right to recover.
9.	Effect on right of action, of devise for payment of debts.	19.	As to rights existing when this act takes effect.
10.	Limitation of actions, &c., on recognizances.		

*Limitation of entry on, or action for, land.**

1 R. C. p. 487,
ch. 128, § 1, 3.
1830-31, p. 98, ch.
30, § 1, 2, 3.
1836-37, p. 11, ch.
8, § 10, 11.
3 and 4 Will. iv.
ch. 27, § 2.

Id. § 11.

Id. § 16.
1 R. C. p. 488,
§ 2.
1830-31, p. 98,
§ 1, 2, 3.
1836-7, p. 10, ch.
8, § 10, 11.

3 and 4 Will. iv.
ch. 27, § 17, 18.

§ 1. No person shall make an entry on, or bring an action to recover, any land, but within fifteen years next after the time at which the right to make such entry, or to bring such action, shall have first accrued to himself, or to some person through whom he claims.

§ 2. No continual or other claim, upon or near any land, shall preserve any right of making an entry, or of bringing an action.

§ 3. If, at the time at which the right of any person to make entry on, or bring an action to recover, any land, shall have first accrued, such person was an infant, married woman or insane, then such person, or the person claiming through him, may, notwithstanding the said period of fifteen years shall have expired, make an entry on, or bring an action to recover such land, within ten years next after the time at which the person, to whom such right shall have first accrued as aforesaid, shall have ceased to be under such disability as existed when the same so accrued, or shall have died, whichever shall first have happened.

§ 4. The preceding section is subject to these provisos: that no such entry or action shall be made or brought by any person, who, at the time at which his right to make or bring the same, shall have first accrued, shall be under any such disability, or by any person claiming through him, but within thirty years next after the time at which such right shall have first accrued, although the person, under disability at such time, may have remained under the same during the whole

* See 8 Leigh 458; 1 Grat. 165; Id. 211; 4 Grat. 16; Id. 141. As to limitation of equitable title, 4 Rand. 493; 5 Leigh 381.

of such thirty years, or although the term of ten years from the period at which he shall have ceased to be under any such disability, or have died, shall not have expired. And when any person shall be under any such disability at the time at which his right to make an entry or bring an action shall have first accrued, and shall depart this life without having ceased to be under any such disability, no time to make an entry, or to bring an action, beyond the fifteen years next after the right of such person shall have first accrued, or the ten years next after the period of his death, shall be allowed by reason of any disability of any other person. ^{9 Leigh 495.}

Limitation of personal actions.

§ 5. Every action to recover money, which is founded upon an award, or on any contract, other than a judgment or recognition, shall be brought within the following number of years next after the right to bring the same shall have first accrued, that is to say: if the case be upon an indemnifying bond taken under any statute, or upon a bond of an executor, administrator, guardian, curator, committee, sheriff or sergeant, deputy sheriff or sergeant, clerk or deputy clerk, or any other fiduciary or public officer, within ten years; if it be upon any other contract by writing under seal, within twenty years; if it be upon an award, or be upon a contract by writing, signed by the party to be charged thereby, or by his agent, but not under seal, within five years; and if it be upon any other contract, within five* years, unless it be an action for any articles charged in any store account, in which case the action may be brought within two years, or an action by one partner against his co-partner, for a settlement of the partnership accounts, or upon accounts concerning the trade of merchandize between merchant and merchant, their factors or servants, where the action of account would lie, in either of which cases the action may be brought until the expiration of five years from a cessation of the dealings in which they are interested together, but not after.

<sup>3 and 4 Will. iv. ch. 27, § 42, and ch. 42, § 3.
1 R. C. p. 488, § 4; p. 489, § 7.
1825-6, p. 24, ch. 23, § 3.
1827-8, p. 24, ch. 30, § 1.
1838, p. 74, ch. 95, § 5.
1 Wash. 190.
1 H. and M. 377.
4 H. and M. 266.
3 Munf. 8.
1 Rand. 284.
4 Rand. 488.
6 Rand. 22.
4 Leigh 236, 519, 603.
9 Leigh 45, 381, 473.
1 Rob. 79.
1 Grat. 391.</sup>

§ 6. The right of action upon the bond of an executor, administrator, guardian, curator or committee, or of a sheriff or sergeant acting as such, shall be deemed to have first accrued as follows: Upon a bond of a guardian or curator of a ward, from the time of the ward's attaining the age of twenty-one years, or from the termination of the guardian's

<sup>1 Grat. 431.
3 Grat. 358.</sup>

* In a note at p. 741 of their reports, the revisors express the opinion that it was sound policy to encourage contracts being reduced to writing, and place those which are in writing, and signed, upon a better footing (under the statute of limitations,) than those which depend merely upon the recollections of witnesses; and this section, as reported by them, allowed for contracts, not evidenced by writing, a shorter time than for contracts which are so evidenced, to wit: *three* years for the one, and *five* for the other. But in the house of delegates, the word *three* was struck out and *five* inserted in its place. The house also continued the distinction (which the revisors thought should be abolished,) between a case for articles charged in a store account, and other cases on account.

See ante, p. 544,
ch. 130, § 23; and
p. 553, ch. 132,
§ 26, *et seq.*

3 Rand. 117.
3 Leigh 348.
5 Leigh 149, 164.
7 Leigh 452.
9 Leigh 484, 495.
11 Leigh 439, 486.

1838, p. 73, ch.
95, § 1.
3 and 4 Will. iv.
ch. 42, § 5.
9 Geo. iv. ch. 14,
§ 1.

3 Call 514.
4 Leigh 519.

9 Geo. iv. ch. 14,
§ 1.
1838, p. 73,
ch. 95, § 1.
See ante, p. 548,
ch. 132, § 6.
9 Leigh 357.

1841-2, p. 55, ch.
98, § 2.

2 H. and M. 124.
3 H. and M. 89.
6 Munf. 450.

3 and 4 Will. iv.
ch. 42, § 3.
1845-6, p. 64, ch.
88.

or curator's office, whichever shall happen first; and upon the bond of any personal representative of a decedent or committee of an insane person, the right of action of a person obtaining execution against such representative or committee, or to whom payment or delivery of estate in the hands of such representative or committee, shall be ordered by a court acting upon his account, shall be deemed to have first accrued from the return day of such execution, or from the time of the right to require payment or delivery upon such order, whichever shall happen first. And as to any suit against such fiduciary himself, or his representative, which could have been maintained if he had given no bond, there shall be no other limitation than would exist if the preceding section was not passed.

§ 7. If any person, against whom the right shall have so accrued on an award, or on any such contract, shall, by writing signed by him or his agent, promise payment of money on such award or contract, the person to whom the right shall have so accrued may maintain an action for the money so promised, within such number of years after the said promise, as it might originally have been maintained within upon the award or contract, and the plaintiff may either sue on such promise, or on the original cause of action, and in the latter case, in answer to a plea under the fifth section, may, by way of replication, state such promise, and that such action was brought within the said number of years thereafter; but no promise, except by writing as aforesaid, shall take any case out of the operation of the said fifth section, or deprive any party of the benefit thereof. An acknowledgment in writing as aforesaid, from which a promise of payment may be implied, shall be deemed to be such promise in the meaning of this section.

§ 8. No acknowledgment or promise, by any personal representative of a decedent, or by one of two or more joint contractors, shall charge the estate of such decedent, or charge any other of such contractors, in any case in which, but for such acknowledgment or promise, the decedent's estate or another contractor could have been protected under the fifth section.

§ 9. No provision in the will of any testator, devising his real estate, or any part thereof, subject to the payment of his debts, or charging the same therewith, shall prevent this chapter from operating against such debts, unless it plainly appear to be the testator's intent, that it shall not so operate.

§ 10. Every action, or *scire facias* upon a recognizance, shall be commenced, if the recognizance be not of bail in a civil suit, within ten years next after the right to bring the same shall have first accrued; and if the recognizance be of such bail, within three years after the right to sue out execution upon the judgment in such suit shall have accrued, omitting in the computation of time such part of said three years, as the right to sue such execution shall have been suspended by injunction, *supersedeas* or other legal process.

§ 11. Every personal action, for which no limitation is otherwise prescribed, shall be brought within five years next after the right to bring the same shall have accrued, if it be for a matter of such nature, that in case a party die, it can be brought by or against his representative, and if it be for a matter not of such nature, shall be brought within one year next after the right to bring the same shall have accrued, unless it be against a master or skipper of a vessel for carrying a slave out of the state, to which this chapter shall not extend.

1 R. C. p. 488, § 16; p. 491, § 15; p. 433, § 52.
3 and 4 Will. iv. ch. 42, § 1.
3 H. and M. 57.
4 H. and M. 139.
2 Munf. 511.
4 Munf. 222, 301, 444, 504.
6 Munf. 191, 352.
3 Rand. 448.
4 Rand. 600.
3 Leigh 682.
4 Leigh 474.
6 Leigh 486.
11 Leigh 542.
12 Leigh 427.
3 Grat. 273.

§ 12. Every action upon a judgment or decree, rendered in any other state or country, shall be barred, if by the laws of such state or country such action would there be barred, and the judgment or decree be incapable of being otherwise enforced there. And whether so barred or not, no action against a person who shall have resided in this state, during the ten years next preceding such action, shall be brought upon any such judgment or decree, rendered more than ten years before the commencement of such action.

1835-6, p. 42, ch. 62, § 1, 2.
2 Rand. 303.

Suits to avoid gifts, &c., and to repeal grants.

§ 13. No gift, conveyance, assignment, transfer or charge, which is not on consideration deemed valuable in law, shall be avoided, either in whole or in part, for that cause only, unless within five years after it is made suit be brought for that purpose, or the subject thereof, or some part of it, be distrained or levied upon by or at the suit of a creditor, as to whom such gift, conveyance, assignment, transfer or charge, is declared to be void by the second section of the one hundred and eighteenth chapter.

See ante, p. 508, ch. 118, § 2, 11 Leigh 145.

§ 14. A bill in equity to repeal, in whole or in part, any grant of land by the commonwealth, shall be brought within ten years next after the date of such grant.

1 R. C. p. 467, ch. 119, § 1, 3 Grat. 291.

When limitation does not apply or is qualified.

§ 15. If any person, to whom the right accrues to bring any such personal action, or *scire facias*, or any such bill to repeal a grant, shall be, at the time the same accrues, an infant, married woman or insane, the same may be brought within the like number of years after his becoming of full age, unmarried or sane, that is allowed to a person, having no such impediment, to bring the same after the right accrues, or after such acknowledgment as aforesaid, except that it shall in no case be brought, after twenty years from the time when the right accrued.

1 R. C. p. 491, § 12, 13, 16, 1825-6, p. 25, § 1, 3, 1827-8, p. 24, ch. 30, § 2, 3 & 4 Will. iv. ch. 42, § 4, 5, 3 Munf. 570, 6 Munf. 64, 352, 9 Leigh 79.

§ 16. If a person die before the time, at which any right mentioned in this chapter would have accrued to him, if he had continued alive, and there be an interval of more than five years between the death of such person and the qualification of his personal representative, such personal represen-

2 Leigh 347, 9 Leigh 79.

tative shall, for the purposes of this chapter, be deemed to have qualified on the last day of the said five years.

1 R. C. p. 491, ch.
128, § 14.
1825-6, p. 25, ch.
23, § 4.
3 & 4 Will. iv. ch.
42, § 4, 5.
2 Munf. 316.
4 Rand. 600.
1 Leigh 163.
3 Leigh 729.
4 Leigh 474.
7 Leigh 277.

§ 17. Where any such right as is mentioned in this chapter shall accrue against a person who had before resided in this state, if such person shall, by departing without the same, or by absconding or concealing himself, or by any other indirect ways or means, obstruct the prosecution of such right, the time that such obstruction may have continued shall not be computed as any part of the time within which the said right might or ought to have been prosecuted. But this section shall not avail against any other person than him so obstructing, notwithstanding another might have been jointly sued with him, if there had been no such obstruction. And upon a contract which was made and was to be performed in another state or country, by a person who then resided therein, no action shall be maintained, after the right of action thereon is barred by the laws of such state or country.

2 Wash. 282, 295.

1 R. C. p. 490,
§ 10.
1841-2, p. 57, ch.
100, § 2.

1 Wash. 302.
3 Call 1.
2 Munf. 511.
4 Munf. 181, 301.

§ 18. If an action, commenced within due time, in the name of, or against one or more plaintiffs or defendants, abate as to one of them by the return of no inhabitant, or by his or her death or marriage, or if, in an action commenced within due time, judgment for the plaintiff shall be arrested or reversed, upon a ground which does not preclude a new action for the same cause, or if there be occasion to bring a new suit, by reason of the loss or destruction of any of the papers or records in a former suit which was in due time; in every such case, notwithstanding the expiration of the time within which a new action or suit must otherwise have been brought, the same may be brought within one year after such abatement or such arrest or reversal of judgment, or such loss or destruction, but not after.

Rights existing when this chapter takes effect.

1825-6, p. 23, ch.
23, § 4.
1830-31, p. 98, ch.
30, § 3.
1836-7, p. 12, ch.
8, § 11.
1838, p. 20, ch. 8,
§ 12.
3 & 4 Will. iv. ch.
27, § 15, 37, 38.

§ 19. No action, suit, *scire facias*, or other proceeding, which may be pending on the day before the commencement of this act, or the right to prosecute which, under the laws in force on that day, shall have accrued before that day, shall be barred by this chapter, any farther or otherwise than as follows: the same, if pending on that day, shall be subject to such limitation as it would have been subject to, if this act had not passed; and where not so pending, if the right to prosecute the same shall exist on that day, for a certain number of years prescribed by any statute, the same, or such other action as may be substituted therefor by this act, may be prosecuted within such time as the same might have been prosecuted, if this chapter had not been enacted, and not after; and where not so pending, if the right to prosecute the same shall exist on that day, in a case in which no certain number of years shall have been prescribed therefor by statute, the same, or such other action as may be substituted

therefor by this act, may be prosecuted within such time as the same would have to be prosecuted, if the right to bring it had accrued on the next day after the commencement of this act.

Title 46.

WARRANTS AND ATTACHMENTS.

CHAP. 150. Of warrants for small claims.

151. Of attachments.

CHAPTER CL.

OF WARRANTS FOR SMALL CLAIMS.

SEC.		SEC.	
1.	For what justice has jurisdiction; when case may be removed to court.	11.	Motions against constables; evidence on; duty of justice in respect thereto.
2.	How warrant is issued, directed, and returnable.	12. }	When constable, &c. liable on such
3.	Witnesses, how summoned and compelled to attend.	13. }	motion.
4. }	How warrant tried, and judgment	14.	Where distress or levy on property not exceeding value of \$20, and title disputed.
5. }	given and recorded.	15. }	When appeal from judgment of
6.	When, and by whom, new trial awarded.	16. }	justice; duty of justice and clerk.
7.	How appeal allowed, or execution stayed.	17. }	How appeal heard, and judgment
8. }	How execution issued, directed,	18. }	thereupon.
9. }	and returnable; duty of clerk	19.	Exception, as to city of <i>Richmond</i> , of the mayor's court.
10. }	upon return to him.		

How issued and proceeded on to judgment.

§ 1. Any claim to property, or to any debt, fine, or other money, which would be recoverable, by action at law or suit in equity, if of greater value or amount than thirty dollars, (exclusive of interest,) shall, when the claim is to a fine, if it be limited to an amount not exceeding twenty dollars, and in other cases, if the claim be not of greater value or amount than thirty dollars, (exclusive of interest,) be cognizable by a justice; and even if the claim be for or against the town or county in which such justice resides. But in every case where the sum or thing in controversy exceeds the amount or value of twenty dollars, the justice shall, upon the application of the defendant, at any time before trial, remove the cause to the court of the county or corporation wherein the same shall be brought, and the clerk of the said court shall docket the same, and it shall be proceeded in as if it were a motion in said court, under the fifth section of chapter one hundred and sixty-seven, of which the notice was docketed at the time such case is so docketed.

1 R. C. p. 251. ch. 71, § 20.
1841-2, p. 140, ch. 197, § 77.

Post. ch. 167, § 5.

1 R. C. p. 252,
§ 21; p. 301, § 3.
1839, p. 43, ch. 67.

§ 2. A justice, when applied to by any person, shall issue a warrant to a constable, requiring him to summon the person against whom the claim is made, to appear before him or some other justice, on a certain day, not exceeding thirty days from the date thereof, to answer such claim. It shall be made returnable to some place within the constable's district in which the defendant resides, unless the justice, for good cause shewn on oath, direct it to be returned to some other place within his county or corporation.

1 R. C. p. 253,
§ 28; p. 254, § 33

§ 3. Subpœnas for witnesses may be issued by a justice, directed to a constable of any county or corporation. Any person, summoned to attend as a witness before a justice, who shall fail so to attend, shall, unless he shew a reasonable excuse therefor, within ten days after being summoned to state such excuse, be fined, by the justice before whom the failure occurred, a sum not exceeding five dollars, for the use of the party on whose behalf he was summoned.

1 R. C. p. 251,
§ 20.

§ 4. The justice shall try such warrant, according to the principles of law and equity, and give judgment for the sum due to either party, with interest, or for the property to which the plaintiff is entitled, (or its value,) with damages. Costs shall be awarded or refused to either party, on the like principles.

1820-21, p. 33, ch.
32, § 2, 3.

§ 5. The justice rendering any such judgment, shall, in a book kept for such purpose, enter the date thereof, the name of the person for, and of the person against, whom it is, and its amount; also, the date of any execution issued thereon, and to whom delivered. If he fail to do so, he shall forfeit twenty dollars. The cost of such book shall be chargeable on the county or corporation. The justice shall also write on the face of the paper or writing on which the warrant issued, or on any writing allowed as a set-off, the date and amount of the judgment and costs, and affix his name thereto.

1839-40, p. 50, ch.
58, § 2.

§ 6. After thirty days from any such judgment, no new trial shall be granted in the case; nor shall it be granted within the thirty days, unless the opposite party be present at the time of the application, or unless after five days' notice to him (if in the county or corporation,) of the time and place of the application for such new trial. The justice who rendered the judgment shall alone have power to grant such new trial, while he is in office; if he die, resign, be absent from the county, or be removed, it may be granted by another justice.

1 R. C. p. 252,
§ 22, 23, 24.
1826-7, p. 102, ch.
97.
1832-3, p. 158, ch.
191, § 10; p. 161,
ch. 193, § 10; p.
167, ch. 197, § 6;
p. 180, ch. 206,
§ 7.
1833-4, p. 270,
284, 289, 296,
§ 10.

§ 7. If a judgment of a justice be for a sum exceeding ten dollars and not exceeding twenty, exclusive of interest and costs, the justice rendering it may stay execution on it forty days from its date, and if said judgment exceed twenty dollars, he may stay execution on it sixty days from its date, on such security being given, in either case, for its payment, as he may deem sufficient. From any such judgment the justice rendering it may, within ten days, on such security being

given as he approves for the payment of the same and all costs and damages, (if it be affirmed,) allow an appeal where the case involves the constitutionality or validity of an ordinance, or by-law of a corporation, or where the matter in controversy, exclusive of interest, is of greater amount or value than ten dollars. The verbal acknowledgment of any surety, taken under this section, shall be sufficient, and the endorsement by the justice of the name of such surety upon the warrant on which the judgment is rendered, shall be conclusive evidence of such acknowledgment. The court in which the appeal is cognizable, may, on motion, for good cause shewn, require the appellant to give new or additional security, reasonable notice of such motion having been given to said appellant; and if he fail to give such security, the appeal shall be dismissed with costs, and the court shall award execution on the judgment rendered by the justice, with costs, against the appellant and his surety.

How execution is issued, directed, and returnable.

§ 8. The justice rendering any judgment may issue a writ of *fiery facias* thereon immediately, if there be not a new trial granted, nor an appeal allowed, nor a stay of execution. And where there is such stay of execution, if the judgment be not paid within the forty or sixty days, as the case may be, a writ of *fiery facias* shall thereupon be issued by a justice against the party and his surety jointly, on which no security shall be taken. 1 R. C. p. 251, § 20, 22

§ 9. A writ of *fiery facias*, issued by a justice, shall be directed to a constable. It may be directed to and executed by a constable of any county or corporation which the plaintiff may designate, and shall be returnable within sixty days. If not wholly satisfied, it may, within one year from the judgment, be returned to and renewed by a justice, notwithstanding the provisions of chapter forty-nine. But every execution issued by a justice, which is not so returned and renewed, shall be returned by the constable to the clerk's office of the court by which he was appointed. Id. § 20; p. 253, § 28, 29; p. 201, § 5.

§ 10. The clerk shall file, alphabetically, in a bundle, all executions returned by a constable within any year which shall, and in a separate bundle such as shall not, appear to be satisfied. Such farther executions may be issued for the recovery of the amount due on any execution so returned, as if the judgment on which it issued had been rendered in court. The same may, at the option of the plaintiff, be directed to and executed either by a constable or by a sheriff or sergeant; and the same proceedings shall be had upon executions issued under this section, as upon executions issued upon judgments of courts. 1 R. C. p. 253, § 27. 1819-20, p. 90, ch. 112. 1840-41, p. 74, ch. 61, § 2.

Motions against constables.

1820-21, p. 33,
ch. 32, § 2.

§ 11. A copy from the entry in the justice's book, of the date of any execution issued by him, and to whom delivered, shall be evidence in any proceeding against the officer to whom it is entered as delivered, for failing to make due return thereof, or for failing to pay over money received thereon. If a justice, upon being applied to for a copy of any entry, shall refuse it, and afterwards, upon being summoned to produce the book in which such entry is or ought to have been made, shall fail to produce such entry, he shall forfeit twenty dollars to the person on whose behalf he is summoned.

1 R. C. p. 253,
§ 29, 31.
3 Grat. 197.

§ 12. If an officer fail to make due return of any execution issued by a justice, he may, after ten days' notice, be fined from time to time by a justice, on the motion of the plaintiff in such execution, in like manner as a court may fine an officer, who fails to make due return of an execution issued from such court. And if an officer shall make such return upon an execution issued by a justice, as would, on a motion against the officer, authorize judgment to be entered against him for the amount of such execution, or any part thereof, if the execution had issued from a court, the creditor on whose behalf such execution issued, or his personal representative, may, on a motion before a justice, after like notice, obtain such judgment against the officer, his sureties and others, as could be given by a court, if the execution had issued from a court. This section shall not prevent a motion in court under chapter forty-nine, or under the fourth section of chapter one hundred and sixty-seven.

Ante, p. 251, 253,
ch. 49
Post. ch. 167, § 4.

1825-26, p. 21,
ch. 19.
2 Rob. 229.
3 Grat. 299.

§ 13. If a constable collect money mentioned in an execution after the return day thereof, he and his sureties shall be liable for the money so collected, in like manner as if the collection had been before the return day. And if a constable receive money on account of any claim entrusted to him to warrant for, and recoverable by warrant, he and his sureties shall be liable for the money so received, as for money collected under execution; and after six months from the date of any receipt for such claim, signed in his official character, such receipt shall be *prima facie* evidence of the receipt of the money.

Where distress or levy on property not exceeding value of twenty dollars; and title disputed.

1839, p. 43, ch.
68, § 1.

§ 14. When an execution on a judgment of a justice, or a warrant of distress, is levied upon property not of greater value than twenty dollars, which is claimed by any person other than the party against whom it issued, such person may apply to a justice of the county or corporation in which the levy is, for a warrant to a constable, requiring him to summon both the creditor and debtor, to shew cause why the property

should not be discharged from the levy. The justice shall issue such warrant, returnable in not less than five days; and if an earlier day shall have been fixed for the sale of the property, he shall make an order on the warrant, requiring the postponement of the sale until after the return day. Upon hearing the parties, or such of them as may attend after being summoned, he shall order the officer to deliver the property to the claimant, or the person from whom it was taken, or shall dismiss the summons, as may seem most proper, and may give such judgment for costs as he may deem just. If the property be of the value of ten dollars, the justice shall, within five days, allow an appeal from such order and judgment, on security being given as in the appeals before mentioned in this chapter.

When appeal from judgment of justice.

§ 15. The justice, from whose judgment an appeal is allowed, shall immediately deliver to the clerk of the court which has cognizance of the appeal, the original warrant, with the judgment and the name of the surety endorsed thereon, and the clerk shall docket the same. 1 R. C. p. 252, 3, § 26.

§ 16. When an appeal is allowed from any order or judgment of a justice, it shall be cognizable by the court to which such justice belongs, unless it be in a case involving the constitutionality or validity of an ordinance, or by-law of a corporation, in which case it shall be cognizable by the circuit court having jurisdiction over the county or corporation in which the judgment is rendered. Id. § 23. 1826-7, p. 102, ch. 97.

§ 17. Every such appeal shall be tried in a summary way, without pleadings in writing. The court trying it shall hear all the evidence produced by either party, whether the same were produced before the justice from whose decision the appeal is taken or not, and determine it according to the principles of law and equity. If the decision be affirmed, execution shall issue against the principal and his surety, jointly, or separately, for the amount of the original judgment, including interest and costs, with damages on the aggregate, at the rate of ten per centum per annum, from the date of that judgment till payment, and for the costs of the appeal; and the execution shall be endorsed "*no security to be taken.*" If the decision be reversed, the appellant shall recover his costs; and such order or judgment shall be made or given as ought to have been made or given by the justice. Where the appeal is from an order or judgment under the fourteenth section, the court shall give such judgment, respecting the property, the expense of keeping it, and any injury done to it, as may be equitable among the parties. 1 R. C. p. 252, § 25; p. 254, § 32. 1839, p. 43, ch. 68.

§ 18. Either party to an appeal, may give ten days notice to the other party, that a motion will be made to try the appeal, and the court shall, on the day named in the notice, whe-

ther at a quarterly or monthly term, try the appeal, without regard to its place on the docket, unless good cause be shewn by the adverse party for a continuance, and, if so continued, shall try it as soon as may be thereafter.

Exception as to the City of Richmond.

1848-9, p. 51,
ch. 94.

§ 19. Nothing contained in this chapter, in conflict with the act entitled "*an act concerning the jurisdiction of the mayor's court of the City of Richmond*," passed the twenty-seventh day of February, one thousand eight hundred and forty-nine, shall be construed to repeal the same.

CHAPTER CLI.

OF ATTACHMENTS.

SEC.		SEC.	
1.	When and how attachments sued out against non-residents.	17.	Proceeding against garnishee, as to debts, &c. admitted, or to ascertain debts, &c. not admitted by him.
2.	Against defendant removing his effects pending suit.	18.	
3.	Against debtors and tenants removing effects, whether claim be payable or not.	19.	
4.		20.	When order of publication made.
5.	Against vessels in certain cases.	21.	What, and by whom, defence may be made.
6.	To whom directed; where returnable.	22.	
7.	How to be executed.	23.	Proceedings when claim of plaintiff sustained.
8.	Duty of officer executing attachment; when to seize property.	24.	
9.		25.	How and when claim of other parties to the property, tried.
10.	Attachment issued or executed on Sunday.	26.	Priority of attachments as to each other.
11.	Attachments in equity; when and how.	27.	When debtor may have case reheard; as to decree of restitution.
12.	Lien of attachment.	28.	
13.	Where property replevied; bond how taken and returned.	29.	Attachments for debts under twenty dollars.
14.		30.	When plaintiff liable for damages.
15.	How interest or profits applied in certain cases.	31.	When appeal bond given, property discharged.
16.	How attached property kept. When it may be sold.	32.	Bonds under this chapter may be given by any person.

*When and how sued out.**

1 R. C. p. 474, ch. 123, § 1.

3 Call 455.

4 Call 245.

6 Munf. 176.

1 Rand. 300.

3 Rand. 511.

1 Leigh 285, 430.

3 Leigh 113, 277,

299.

12 Leigh 379, 406.

1 Rob. 573.

1 Grat. 96.

§ 1. When any suit is instituted for any debt, or for damages for breach of any contract, on affidavit stating the amount and justice of the claim, that there is present cause of action therefor, that the defendant or one of the defendants is not a resident of this state, and that the affiant believes he has estate or debts due him within the county or corporation in which the suit is, or that he is sued with a defendant residing therein, the plaintiff may forthwith sue out of the clerk's

* See *post.* note to § 5 of ch. 170, as to the abolition of bail for defendant's appearance, and the substitution of the remedy given by § 2 of this chapter.

office an attachment against the estate of the non-resident defendant for the amount so stated.

§ 2. On affidavit at the time of, or after the institution of any suit, that the plaintiff's claim is believed to be just, and, where the suit is to recover specific personal property, stating the nature, and, according to the affiant's belief, the value of such property, and the probable amount of damages the plaintiff will recover for the detention thereof, or where it is to recover money for any claim or damages for any wrong, stating a certain sum which (at the least) the affiant believes the plaintiff is entitled to, or ought to recover, and an affidavit also, that the affiant believes that the defendant is removing or intends to remove such specific property or his own estate, or the proceeds of the sale of his property, or a material part of such estate or proceeds out of this state, so that process of execution on a judgment in said suit, when it is obtained, will be unavailing, in any such case the clerk shall issue an attachment as the case may require. If the suit be for specific property, the attachment may be against the specific property sued for, and against the defendant's estate for so much as is sufficient to satisfy the probable damages for its detention; or at the option of the plaintiff, against the defendant's estate for the value of such specific property and the damages for its detention. If the suit be to recover money for a claim, or damages for a wrong, the attachment shall be against the defendant's estate, for the amount specified in the affidavit as that which the affiant believes the plaintiff is entitled to or ought to recover.

§ 3. On complaint by any person or his agent to any justice, whether his claim is payable or not, that his debtor intends to remove, or is removing, or has removed his effects, out of this state, so that there will probably not be therein sufficient effects of the debtor to satisfy the claim when judgment is obtained therefor, should only the ordinary process of law be used to obtain such judgment, if such person or his agent make oath to the truth of such complaint, to the best of his belief, as well as to the amount and justice of his claim, and at what time the same is payable, the justice shall issue an attachment against the estate of the defendant, for the amount so stated.

1 R. C. p. 476,
§ 6; p. 477, § 10;
p. 478, §§ 11, 14.
3 Call 413.
2 H. & M. 308.
6 Munf. 585.
3 Leigh 283, 719.
7 Leigh 308.

§ 4. On complaint by any lessor or his agent to a justice, that any person liable to him for rent intends to remove, or is removing, or has within thirty days removed, his effects from the leased premises, if such lessor or his agent make oath to the truth of such complaint, to the best of his belief, and to the rent which is reserved, (whether in money or other thing,) and will be payable within one year, and the time or times when it will be so payable, and also make oath either that there is not, or he believes, unless an attachment issues, there will not be left on such premises property liable to distress, sufficient to satisfy the rent so to become payable, such justice

1 R. C. p. 448, ch.
113, § 9, 10, 11.
1819-20, p. 18, ch.
20, § 1.
1822-3, p. 29, ch.
29, § 1.
1840-41, p. 77, ch.
67, § 2.
3 Rand. 148.
9 Leigh 149.

shall issue an attachment for the said rent, against such goods as might be distrained for the same if it had become payable, and against any other estate of the person so liable therefor.

1826-7, p. 23, ch.
26, § 1, 2.
1833-4, p. 80, ch.
68, § 9.
1845-6, p. 73, ch.
105, § 1.

§ 5. If any person has instituted suit against the commander of any steamboat or other vessel, or against any other person, for any damage sustained by the plaintiff, or any penalty incurred by the defendant, by reason of a slave being assisted to abscond from his owner, or transported or carried out of the state, or out of any county, in violation of any statute, or against the owner of any such vessel, or of any raft or river craft navigating the *Ohio* river, or any of its tributaries, within the jurisdiction of this state, for materials, supplies or labour furnished or bestowed in the building, repairing, equipping, navigating or attending upon the same, or for wharfage, or upon any contract for the transportation of, or for any injury done to, any person or property, by such vessel, raft or craft, or by any person having charge of her, or in her employment, the plaintiff may forthwith sue out of the clerk's office an attachment against the defendant's estate, or against the vessel, raft or river craft, of which he is owner or commander, with all her tackle, apparel, and furniture.

How directed, executed and returnable.

1 R. C. p. 302,
§ 6; p. 450, § 16;
p. 480, § 17; p.
448, § 9; p. 476,
§ 6.
1826-7, p. 23 ch.
26, § 1.
3 Call 413.

§ 6. Any attachment, issued under this chapter, may be directed to the sheriff, sergeant or constable of any county or corporation. If issued in a pending suit, it shall be returnable to a term of the court in which the same is pending, or to some rule day thereof. Where issued by a justice, it shall, if the claim is over twenty dollars, (exclusive of interest,) be returnable, at the option of the plaintiff, to the next term of the circuit or county or corporation court, of the county or corporation in which the debtor last resided, or in which the leased tenement may be.

1 R. C. p. 476, § 6.
1845-6, p. 74, ch.
105, § 2.
3 Grat. 139.

§ 7. Every such attachment, (except where it is sued out specially against specified property,) may be levied upon any estate, real or personal, of the defendant, or so much thereof as is sufficient to pay the amount for which it issues. It shall be sufficiently levied in every case, by a service of a copy of such attachment on such persons as may be designated by the plaintiff in writing, or be known to the officer to be in possession of effects of, or to be indebted to, the defendant; and as to real estate, by such estate being mentioned and described by endorsement on such attachment.

1 R. C. p. 477,
§ 7.
1826-7, p. 23, ch.
26, § 1.
6 Munf. 585.
Gilm. 34.
4 Rand. 158.
7 Leigh 308.

§ 8. But if the plaintiff shall, at the time of suing out such attachment, or afterwards, give bond with security, approved by the clerk or justice issuing the attachment, in a penalty of at least double the amount of the claim sworn to or sued for, with condition to pay all costs and damages which may be awarded against him, or sustained by any person, by reason of his suing out the attachment, the said officer shall take pos-

session of the property specified in the attachment, or where no such property is specified, of any estate or effects of the defendant, or so much thereof as is sufficient to pay the plaintiff's claim. When such bond is given, the fact shall be endorsed on the attachment, or certified by the clerk or justice to the officer, who shall return the said certificate with the attachment; and the bond, when taken by a justice, shall be returned by him to, and filed in, the clerk's office of the court to which the attachment is returnable.

§ 9. In either case, the officer shall return with the attachment the names of the persons *designated as** having effects of, or owing debts to the defendant; shall summon them to appear as garnishees, at the first day of the court to which the attachment is returnable, or if the attachment be returnable at rules, at the first day of the next term after it is returnable, and shall also return a list and description of the property taken (if any) under such attachment; and likewise the date of the service, or execution thereof, on each person and parcel of property.

1 R. C. p. 476, § 2.
1845-6, p. 74, ch.
103, § 2.

§ 10. Such attachment may be issued or executed on Sunday, if oath be made, that the defendant is actually removing his effects on that day.

1 R. C. p. 480,
§ 19.

Attachments in equity.

§ 11. When any person claims to be entitled, in equity, to any money or property, from any person against whom; and for which an attachment might be sued out of a clerk's office, if the claim were recoverable at law, upon affidavit according to the nature of the case, as hereinbefore specified, and filing the same with his bill, he may require the clerk to endorse on the *subpœna* an order to the officer to whom it is directed, to attach the specific property mentioned in such affidavit, and the estate of the defendant, against whom the claim is, in the hands of, or the debts due or to become due to him by, the other defendants. Any such attachment in equity shall be executed in the same manner and shall have the same effect as at law; but the proceeding thereon shall be the same as in other suits in chancery, and the court, or in vacation thereof, a judge of the circuit court, may interpose by an injunction or the appointment of a receiver, or otherwise, to secure the forthcoming of the specific property sued for, and so much other estate as will probably be required to satisfy any future order or decree that will be made in the cause.

1 R. C. p. 474, ch.
123, § 1.

6 Call 106.
6 Munf. 176.
3 Rand. 434.
3 Leigh 113, 299.
12 Leigh 406, 7.

Attachment lien; replevying; keeping or selling property.

§ 12. The plaintiff shall have a lien, from the time of the levying of such attachment or serving a copy thereof, as

1 R. C. p. 477, ch.
123, § 7.

* According to the printed amendments of the joint committee on revision, (p. 164.) the words *designated as* were struck out; but they are in the bill as engrossed and enrolled.

4 H. and M. 259.
5 Munf. 178.
12 Leigh 406-7.
2 Grat. 350, 497.

aforesaid, upon the personal property, choses in action and other securities of the defendant against whom the claim is, in the hands of or due from any such garnishee on whom it is so served, and on any real estate mentioned in an endorsement on the attachment or subpoena, from the suing out of the same.

1 R. C. p. 448,
§ 9; p. 474, § 2;
p. 477, § 8.
1826-7, p. 23, ch.
26, § 1.
1845-6, p. 73, ch.
105, § 5.
6 Muuf. 585.
3 Grat. 4.

§ 13. Any property levied on or seized as aforesaid under any attachment, where the plaintiff has given bond, may be retained by, or returned to, the person in whose possession it was, on his giving bond, with condition to have the same forthcoming at such time and place as the court may require; or the defendant, against whom the claim is, may release from any attachment the whole of the estate attached, by giving bond, with condition to perform the judgment or decree of the court. The bond, in either case, shall be taken by the officer serving the attachment, with security payable to the plaintiff, and in a penalty in the latter case at least double the amount or value for which the attachment issued, and in the former either double the same, or double the value of the property retained or returned, at the option of the person giving it.

1 R. C. p. 477,
§ 7, 9.
1826-7, p. 24, ch.
26, § 1.

§ 14. Every such bond shall be returned by the officer to, and filed by, the clerk of the court in which the suit is pending, or to which the attachment is returnable, and the plaintiff may, within thirty days after the return thereof, file exceptions to the same, or to the sufficiency of the security therein. If such exception be sustained, the court shall rule the said officer to file a good bond, with sufficient security, to be approved by it, on or before a certain day to be fixed by the court. If he fail to do so, he and his sureties in his official bond, shall be liable to the plaintiff as for a breach of such bond. But the officer shall have the same rights and remedies against the parties to any bond so adjudged bad, as if he were a surety for them.

§ 15. When any attachment is sued out, either at law or in equity, on such affidavit as is mentioned in the second or third section, although the property or estate attached be not replevied as aforesaid, the interests and profits thereof, pending the suit and before judgment or decree, may be paid to the defendant, if the court deem it proper, and at any time during such period the court, or a judge of a circuit court in vacation, may discharge the attachment, as to the whole of the estate of the defendant against whom the claim is, on his giving bond, with security payable to the plaintiff, in a penalty double the value of such estate, with condition, if judgment or decree be rendered for the plaintiff in said suit, to pay the said value, or so much thereof as may be necessary to satisfy the same.

1 R. C. p. 448,
§ 9; p. 478, § 14.
1838, p. 73, ch.
94.

§ 16. All property, seized under any attachment, and not replevied or sold before judgment, shall be kept in the same manner as similar property taken under execution. But such

as is expensive to keep or perishable, (other than slaves,) may be sold, by order of the court, or if it be a circuit court, in vacation thereof, by order of the judge; such sale to be made in the same manner as if it were a sale under execution, except that where the claim, for which the attachment was sued out, is not yet payable, or the court or judge sees other reason for directing a credit, the sale under this, or any other section of this chapter, shall be on credit until the time it is payable, or such other time as the court or judge may direct, and for the proceeds of sale, bond, with good security, shall be taken, payable to the officer, for the benefit of the party entitled, and shall be returned by the officer to the court.

1840-41, p. 78, ch. 68, § 2.
1845-6, p. 74, ch. 105, § 3.

Proceeding where there is a garnishee.

§ 17. When any garnishee shall appear, he shall be examined on oath. If it appear, on such examination, or by his answer to a bill in equity, that at or after the service of the attachment he was indebted to the defendant against whom the claim is, or had in his possession or control any goods, chattels, money, securities or other effects, belonging to the said defendant, the court may order him to pay the amount so due by him, and to deliver such effects to such person as it may appoint as receiver; or such garnishee, with the leave of the court, may give bond, with sufficient security, payable to such person and in such penalty as the court shall prescribe, with condition to pay the amount due by him, and have such effects forthcoming, at such time and place as the court may thereafter require.

1 R. C. p. 474, § 1; p. 476, § 6; p. 478, § 13; p. 479, § 15.
3 Rand. 434.

§ 18. If any garnishee, summoned as aforesaid, fail to appear in an attachment at law, the court may either compel him to appear, or hear proof of any debt due by him to, or of effects in his hands of, the defendant in such attachment, and make such orders in relation thereto, as if what is so proved had appeared on his examination.

§ 19. When it is suggested by the plaintiff in any attachment at law, that the garnishee has not fully disclosed the debts due by him to, or effects in his hands of, the defendant in such attachment, the court shall cause a jury to be empaneled, without any formal pleading, to enquire as to such debts and effects, and proceed, in respect to any such found by the jury, in the same manner as if they had been confessed by the garnishee. If the verdict be in favour of the garnishee, he shall have judgment for his costs against the plaintiff.

1 R. C. p. 479, § 15.

Order of publication; defence to the attachment; conflicting claims; and judgment.

§ 20. When any attachment, except under the third or fourth section, is returned executed, an order of publication

1 R. C. p. 474, § 2.
1839-40, p. 47, ch. 53, § 4.

shall be made against the defendant against whom the claim is, unless he has been served with a copy of the attachment, or with process in the suit in which the attachment issued

1 R. C. p. 478,
§ 12.
1840-41, p. 78, ch.
68, § 1.
Gilm. 34, 142.
2 Leigh 25.

§ 21. Either the defendant in any such attachment, or any garnishee, or any party to any forthcoming or replevy bond given as aforesaid, or the officer, who may be liable to the plaintiff by reason of such bond being adjudged bad, may make defence to such attachment, but the attachment shall not thereby be discharged, or the property levied on released.

1826-7, p. 26, ch.
27, § 2.
1840-41, p. 77,
ch. 67, § 1.
2 H. and M. 308.
3 Rand. 148.
9 Leigh 149.

§ 22. The right to sue out any such attachment may be contested; and when the court is of opinion that it was issued on false suggestions, or without sufficient cause, judgment shall be entered that the attachment be abated. When the attachment is properly sued out, and the case heard upon its merits, if the court be of opinion that the claim of the plaintiff is not established, final judgment shall be given for the defendant. In either case he shall recover his costs, and there shall be an order for the restoration to him of the attached effects.

1 R. C. p. 448,
§ 9; p. 476, § 2, 3;
p. 478, § 13.
1841-2, p. 54, ch.
97.
1826-7, p. 24, ch.
26, § 2.
1845-6, p. 73, 4,
ch. 105, § 3, 5.
3 Call 455.
3 Munf. 94.
2 Rand. 206.
3 Leigh 272, 719.
12 Leigh 379.
1 Grat. 96.

§ 23. If the claim of the plaintiff be established, judgment or decree shall be rendered for him, and the court shall dispose of the specific property mentioned in the second section as may be right, and order the sale of any other effects or real estate, which shall not have been previously replevied or sold under this chapter, and direct the proceeds of sale, and whatever else is subject to the attachment, including what is embraced by such replevy or forthcoming bond, to be applied in satisfaction of the judgment or decree. But no real estate shall be sold, until all other property and money subject to the attachment has been exhausted, and then only so much thereof as is necessary to pay the judgment or decree.

Id.

§ 24. But if the defendant, against whom the claim is, has not appeared or been served with a copy of the attachment sixty days before such decree, the plaintiff shall not have the benefit of the preceding section, unless or until he shall have given bond, with sufficient security, in such penalty as the court shall approve, with condition to perform such future order as may be made upon the appearance of the said defendant and his making defence. If the plaintiff fail to give such bond, in a reasonable time, the court shall dispose of the estate attached or the proceeds thereof, as to it shall seem just.

1 R. C. p. 480,
§ 16.
Gilm. 142.

§ 25. Any person may file his petition, at any time before the property attached as the estate of a defendant is sold, or the proceeds of sale paid to the plaintiff under the decree or judgment, disputing the validity of the plaintiff's attachment thereon, or stating a claim thereto, or an interest in or lien on the same, under any other attachment or otherwise, and its nature, and upon giving security for costs, the court, without any other pleading, shall empanel a jury to enquire into such claim, and if it be found that the petitioner has title to, or a lien on, or any interest in, such property or its proceeds, the court shall make such order as is necessary to protect his

rights; the costs of which enquiry shall be paid by either party, at the discretion of the court.

§ 26. The attachment first served on the same property, or on the person having such property in possession, shall have priority of lien. 12 Leigh 406.
5 Grat. 177.

Rehearing after judgment or decree.

§ 27. If a defendant, against whom, on publication, judgment or decree is rendered under any such attachment, or his personal representative, shall return to or appear openly in this state, he may, within one year, after a copy of such judgment or decree shall be served on him at the instance of the plaintiff, or within five years from the date of the decree or judgment, if he be not so served, petition to have the proceedings reheard. On giving security for costs, he shall be admitted to make defence against such judgment or decree, as if he had appeared in the case before the same was rendered, except that the title of any *bona fide* purchaser to any property, real or personal, sold under such attachment, shall not be brought in question or impeached. But this section shall not apply to any case in which the petitioner or his decedent was served with a copy of the attachment, or with process in the suit wherein it issued, more than sixty days before the date of the judgment or decree, or to any case in which he appeared and made defence. 1 R. C. p. 475,
§ 4.
10 Leigh 507.
3 Grat. 98.

§ 28. On any rehearing or new trial had under the preceding section the court may order the plaintiff in the original suit to restore any money, paid to him under such judgment or decree, to the heir or representative of such defendant as the same may be the proceeds of real or personal estate, and enter a judgment or decree therefor against him, or it may confirm the former judgment or decree; and in either case adjudge the costs to the prevailing party.

Attachments for debts under twenty dollars.

§ 29. Any creditor whose claim, whether legal or equitable, does not exceed twenty dollars, exclusive of interest, upon complaint on oath in the manner prescribed by the first, second, third and eleventh sections, as the case may be, may obtain from any justice of any county or corporation in which any property or effects of the defendant may be, or in which any person indebted to him may reside, an attachment against the estate of such defendant, directed to any sheriff, sergeant or constable of his county or corporation and returnable before any justice thereof; and thereupon such proceedings may be had before the justice as would, if the claim exceeded twenty dollars, be had before a court, except that the proceedings shall be in all cases without any formal pleading, and an order of publication need not be published in a newspaper, and the 1 R. C. p. 477:
§ 10, 11.
1839, p. 43, ch.
64.
1845-6, p. 74, ch.
105, § 6.

justice shall try and decide all questions without a jury. All bonds taken under such attachment shall be filed with the clerk of the court to which the justice belongs.

Where damages against plaintiff; or appeal from judgment. How bonds are given in attachment cases.

1845-6, p 74, ch.
105, § 7.

§ 30. If, upon defence being made, in any case in which property is seized under an attachment, that the attachment was sued out without sufficient cause, it be found either by the court or by the jury, if one be empaneled, that the defence is well founded, judgment may be entered for the defendant against the plaintiff for the damages sustained by the defendant by reason thereof.

Id. § 9.

§ 31. Where judgment or decree in favour of the plaintiff is rendered in any case in which an attachment is sued out, and on an appeal therefrom, an appeal bond is given with condition to prosecute the appeal with effect, or pay the debt, interest, costs and damages, as well as the costs of the appeal, the officer in whose custody any attached property may be, shall deliver the same to the owner thereof.

How bonds may be given.

2 H. and M. 308.
3 Leigh 719.
7 Leigh 308.

§ 32. Any bond authorized or required by any section of this chapter may be given either by the party himself, or by any other person.

Title 47.

INTERPLEADER AND AWARDS.

CHAP. 152. Of conflicting claims to property levied on or in possession of a third party.

153. Of awards.

CHAPTER CLII.

OF CONFLICTING CLAIMS TO PROPERTY LEVIED ON OR IN POSSESSION OF A THIRD PARTY.

SEC.

1. Proceeding when defendant dis-claims interest in the subject. How right of third party is tried.
2. How claim of third party tried to property distrained or levied on.
3. Power of court in cases under preceding sections.

SEC.

4. } Indemnifying bond to officer. His
5. } course where it is given, and
- } where not.
6. Effect of such bond. Suspending bond, and effect of it. As to suit on either bond.
7. When property sells for more than the claim, how surplus to be paid.

§ 1. Upon affidavit of a defendant in any action that he claims no interest in the subject matter of the suit, but that some third party has a claim thereto, and that he does not collude with such third party, but is ready to pay or dispose of the subject matter of the action as the court may direct, the court may make an order requiring such third party to appear and state the nature of his claim, and maintain or relinquish it, and in the meantime stay the proceedings in such action. If such third party, on being served with such order, shall not appear, the court may, on proof of the plaintiff's right, render judgment for him, and declare such third party to be forever barred of any claim in respect of the subject matter, either against the plaintiff, or the original defendant, or his personal representative. If such third party, on being so served, shall appear, the court shall allow him to make himself defendant in the action, and, either in said action or otherwise, cause such issue or issues to be tried as it may prescribe, and may direct which party shall be considered the plaintiff in the issues, and shall give judgment upon the verdict rendered on such trial, or if a jury be waived by the parties interested, shall determine their claims in a summary way.

1 and 2 Will. iv.
ch. 58, § 1, 2, 3.

12 Leigh 173.

§ 2. When property, of the value of more than twenty dollars, is taken under a warrant of distress, or an execution issued by a justice, or when property of any value, is taken under an execution issued by the clerk of a court, and any person, other than the party against whom the process issued, claims such property, or the proceeds or value thereof, the circuit court, or the court of the county or corporation in which the property is taken, or the judge of such circuit court in vacation, upon the application of the officer, where no indemnifying bond has been given, or if one has been given, on the application of the person who claims such property and has given such suspending bond as is hereinafter mentioned, may cause to appear before such court, as well the party issuing such process, as the party making such claim, and such court may exercise, for the decision of their rights, all or any of the powers and authority prescribed in the preceding section.

1 and 2 Will. iv.
ch. 58, § 6.

1 Call 18.

§ 3. In any case before mentioned in this chapter, the court may make all such rules and orders, and enter such judgment as to costs and all other matters, as may be just and proper.

1 and 2 W. iv. ch.
58, § 7.

9 Leigh 153.

§ 4. If any officer levies or is required to levy an execution or a warrant of distress on property, and a doubt shall arise whether the said property is liable to such levy, he may give to the plaintiff, his agent or attorney at law, notice that an indemnifying bond is required in the case. Bond may thereupon be given by any person, with good security, payable to the officer in a penalty equal to double the value of the property, conditioned to indemnify him against all damages, which he may sustain in consequence of the seizure or sale of the said property, and to pay to any claimant of such pro-

1 R. C. p. 533, ch
134, § 25.

1827-8, p. 23, ch.

30, § 1.

1830-31, p. 86, ch.

26.

5 Munf. 32.

4 Rand. 8, 427.

5 Rand. 693.

12 Leigh 383, 634.

1 Grat. 282.

2 Grat. 363.

perty all damages which he may sustain in consequence of such seizure or sale; and also to warrant and defend, to any purchaser of the property, such estate or interest therein as is sold.

1 R. C. p. 533,
§ 25, 26.
1830-31, p. 86, ch.
26.

§ 5. If such bond be not given within a reasonable time after such notice, the officer may refuse to levy on such property, or restore it to the person from whose possession it was taken, as the case may be. If it be given, where there has been no levy, within a reasonable time, or after a levy, before the property is so restored, it shall be returned within twenty days to the clerk's office from which the execution issued, or if the execution was not issued by a clerk, to the office of the court by which such officer was appointed, or in which he qualified.

1 R. C. p. 533,
§ 26, 27.
1827-8, p. 23, ch.
30, § 1.
1830-31, p. 86, ch.
26.

§ 6. The claimant or purchaser of such property shall, after such bond is so returned, be barred of any action against the officer levying thereon, provided the security therein be good at the time of taking it. But the sale of any such property shall be suspended at the instance of any claimant thereof, who shall deliver to the officer bond with good security, in a penalty equal to double the value thereof, payable to said officer, conditioned to pay to all persons, who may be injured by suspending the sale thereof until the claim thereto can be adjusted, such damages as they may sustain by such suspension. Upon any such bond as is mentioned in this or the preceding section, suit may be prosecuted, in the name of the officer, for the benefit of the claimant, creditor, purchaser or other person injured, and such damages recovered in said suit as a jury may assess. The same may be prosecuted and execution had, in the name of such officer when he is dead, in like manner as if he were alive.

2 Va. Cas. 256.
5 Munf. 287.
2 Leigh 651.

1827-8, p. 24, ch.
30, § 2.

§ 7. When property, the sale of which is indemnified, sells for more than enough to satisfy the execution or distress warrant, under which it is taken, the surplus shall be paid by the officer into the court to the office whereof the indemnifying bond is required to be returned, or as such court may direct. The said court may take such order for the disposition thereof, either temporarily until the question as to the title to the property sold is determined, or absolutely, as in respect to the rights of those interested may seem to it proper.

CHAPTER CLIII.

OF AWARDS.

SEC.

1. Submission made a rule of court.
2. Submission irrevocable; power of court over it.

SEC.

3. How award is entered as judgment of court.
4. For what, award may be set aside.
5. Fiduciary may submit to arbitration.

§ 1. Persons desiring to end any controversy, whether there be a suit pending therefor or not, may submit the same to arbitration, and agree that such submission may be entered of record in any court. Upon proof of such agreement out of court, or by consent of the parties given in court, in person or by counsel, it shall be entered in the proceedings of such court; and thereupon a rule shall be made, that the parties shall submit to the award which shall be made in pursuance of such agreement.

1 R. C. p. 454, ch. 114, § 1.

2 Call 106.

6 Munf. 453.

4 Rand. 95.

6 Leigh 62.

9 Leigh 142.

12 Leigh 495.

§ 2. No such submission, entered, or agreed to be entered, of record in any court, shall be revocable by any party to such submission, without the leave of such court; and such court may, from time to time, enlarge the term within which an award is required to be made.

3 and 4 Will. iv. ch. 42, § 39.

5 Call 431.

§ 3. Upon the return of any such award, made under such an agreement, (whether any previous record of the submission, or a rule thereupon, has been made or not,) it shall be entered up as the judgment or decree of the court, unless good cause be shewn against it at the first term after the parties have been summoned to shew cause against it.*

1 R. C. p. 454, § 2.

§ 4. No such award shall be set aside, except for errors apparent on its face, unless it appear to have been procured by corruption, or other undue means, or that there was partiality or misbehaviour in the arbitrators or umpires, or any of them. But this section shall not be construed to take away the power of courts of equity over awards.†

Id.

§ 5. Any personal representative of a decedent, guardian of an infant, committee of an insane person, or trustee, may submit to arbitration any suit or matter of controversy touching the estate or property of such decedent, infant or insane person, or in respect to which he is trustee. And any submission so made in good faith, and the award made thereupon, shall be binding and entered as the judgment of a court, if so required by the agreement, in the same manner as other submissions and awards. No such fiduciary shall be responsible for any loss sustained by an award adverse to the interests of his ward, insane person, or beneficiary under any such trust, unless it was caused by his fault or neglect.‡

1 R. C. p. 454, § 2.

6 Munf. 514.

6 Leigh 63.

* See 1 Wash. 14, 156, 290, 303; 1 Call 379; 2 Call 433; 3 Call 309; 1 H. and M. 67; 2 H. and M. 408, 544; 4 H. and M. 363; 4 Munf. 114; 5 Munf. 10, 493; 1 Rand. 449; 3 Rand. 2, 94, 122; 4 Rand. 95, 275; 6 Rand 529; 4 Leigh 362, 436; 6 Leigh 62; 12 Leigh 495, 550.

† Id.

‡ Where a vendee submits to arbitration, whether, after award against him, he can have recourse against vendor; see 5 Munf. 411.

Title 48.

MANDAMUS, PROHIBITION, AND HABEAS CORPUS.

CHAP. 154. Of the writ of mandamus.

155. Of the writ of prohibition.

156. Of the writ of habeas corpus.

CHAPTER CLIV.

OF THE WRIT OF MANDAMUS.

SEC.

1. } Of the return to the writ and
 2. } pleadings thereon.
 3. }

SEC.

4. } What judgment to be rendered.
 5. }

1 R. C. p. 471.
 ch. 121.

1 Will. iv. ch. 21,

§ 3.

6 and 7 Vict. p.
 578, ch. 67, § 1.

1 Call 562.

2 Va. Cas. 9.

§ 1. When a writ of *mandamus* is issued, the return thereto shall state, plainly and concisely, the matter of law or fact relied on in opposition to the complaint.

§ 2. The complainant may thereupon demur to the return, or plead specially thereto, or both.

§ 3. The defendant may reply, take issue on, or demur, to the pleas of the complainant.

§ 4. If a verdict be found, or judgment rendered, for the person suing out the writ, on demurrer or by *nil dicit*, or for want of a replication or other pleading, he shall recover his costs and such damages as the jury may assess, and final judgment thereupon shall be entered and enforced by execution, as in other cases; and a peremptory *mandamus* shall be awarded without delay, as if the return to the writ had been adjudged insufficient.

§ 5. If judgment be rendered for the defendant, he shall recover his costs.

CHAPTER CLV.

OF THE WRIT OF PROHIBITION.

1 Will. iv. ch.
 21, § 1.

1 Va. Cas. 158.

2 Va. Cas. 42.

5 Rand. 636.

§ 1. It shall not be necessary to file a suggestion on any application for a writ of prohibition, but the same may be applied for on affidavits only; and in case the party applying be directed to declare in prohibition, before writ issued, the declaration shall be expressed to be on behalf of such party only, and not on the behalf of the party and of the commonwealth, and shall contain and set forth, in a concise manner, so much only of the proceeding as may be necessary to shew

the ground of the application, without alleging the delivery of a writ or any contempt, and shall conclude by praying that a writ of prohibition may issue, to which declaration the defendant may demur, or plead such matters, by way of traverse or otherwise, as may be proper to shew that the writ ought not to issue, and conclude by praying that such writ may not issue; and judgment shall be given that the writ of prohibition do or do not issue, as justice may require; and the party in whose favour such judgment is given, whether on verdict or otherwise, shall recover his costs; and in case a verdict shall be given for the plaintiff, the jury may assess damages, for which judgment shall also be given, but such assessment shall not be necessary to entitle the plaintiff to costs.

CHAPTER CLVI.

OF THE WRIT OF HABEAS CORPUS.

SEC.

1. } How writ issued, directed and re-
2. } turnable.
3. Bond may be required of petitioner.
4. } How writ served; penalty for dis-
5. } obeying it.
6. Power of the court or judge trying the writ.
7. } When affidavits may be read; facts
8. } proved may be made part of the record.

SEC.

9. } Judge has power of a court; force
10. } and effect of judgment.
11. How and when court of appeals summoned to try appeal from such judgment.
12. Writ of error or suspending order, when prisoner remanded; when he is admitted to bail.
13. Writ *de homine replegiando* abolished.

§ 1. The writ of *habeas corpus ad subjiciendum* shall be granted forthwith by the general court, or any circuit court, or any judge thereof in vacation, to any person who shall apply for the same by petition, shewing by affidavit, or other evidence, probable cause to believe that he is detained without lawful authority. 1 R. C. p. 468, ch. 120, § 1.
7 Leigh 438.

§ 2. The writ shall be directed to the person in whose custody the petitioner is detained, and made returnable as soon as may be before the court or judge ordering the same, or any other of the said courts or judges.

§ 3. The court or judge, granting the writ, may previously require bond with surety, in a reasonable penalty, payable to the person to whom the writ is directed, with condition that the petitioner will not escape by the way, and for the payment of such costs and charges as may be awarded against him. It shall be filed with the other proceedings on the writ, and may be sued on for the benefit of any person injured by the breach of its condition.

§ 4. The writ shall be served on the person to whom it is directed, or in his absence from the place where the petitioner is confined, on the person having the immediate custody of him. 1 R. C. p. 468, ch. 120, § 2.

1 R. C. p. 468,
§ 2, 3.

§ 5. If any person, on whom such writ is served, shall, in disobedience to such writ, fail to bring the body of the petitioner, with a return of the cause of his detention, before a court or judge before whom the writ is returnable, for three days after such service, or when he has to bring the prisoner more than twenty miles, for so many more days as is equal to one day for every twenty miles of such further distance, he shall forfeit to the petitioner three hundred dollars.

Id. § 5, 6.

§ 6. The court or judge, before whom the petitioner is brought, after hearing the matter, both upon the return and any other evidence, shall either discharge or remand him, or admit him to bail, as may be proper, and adjudge the costs of the proceeding, including the charge for transporting the prisoner, to be paid as shall seem to be right.

Id. § 7.

§ 7. At the discretion of the court or judge, the affidavits of witnesses, taken by either party, on reasonable notice to the other, may be read as evidence.

Id.

§ 8. All the material facts proved shall, when it is required by either party, be made a part of the proceedings, which, when they are had in vacation, shall be signed by the judge, and certified to the clerk of the circuit court of the county or corporation in which the judgment is rendered, and be entered by him among the records of that court.

Id. § 4, 5, 7.

§ 9. The judge issuing any such writ in vacation, or the judge before whom it is tried, shall have the same power to enforce obedience to the writ, to compel the attendance of witnesses, or to punish contempts of his authority, as a court has; and his judgment on the trial of the writ, when entered of record as aforesaid, shall be considered and be enforced as if it were a judgment of the court, among whose records it is entered.

Id. § 9.

§ 10. Any such judgment entered of record shall be conclusive, unless the same be reversed, except that the petitioner shall not be precluded from bringing the same matter in question in an action for false imprisonment.

Id. § 12.

5 Munf. 292.

§ 11. If, during the recess of the court of appeals, the governor, or the president of the court, should think the immediate revision of any such judgment to be proper, he may summon the court for that purpose, to meet on any day to be fixed by him.

§ 12. When the prisoner is remanded, the execution of the judgment shall not be suspended by the writ of error, or suspended for the purpose of applying for one. But where he is ordered to be discharged, and the execution of the judgment is suspended, for the purpose of applying for a writ of error, the court or judge making such suspending order may, in their discretion, admit the prisoner to bail until the expiration of the time allowed for applying for the writ of error, or, in case the writ of error be allowed, until the decision of the court of appeals thereon is duly certified.

Id. § 12.

§ 13. The writ *de homine replegiando* is abolished.

Title 49.

COURTS AND JURIES.

CHAP. 157. Of the county and corporation courts.

158. Of the circuit courts.

159. Of the general court.

160. Of the court of appeals.

161. General provisions relating to the courts.

162. Of juries generally.

CHAPTER CLVII.

OF THE COUNTY AND CORPORATION COURTS.*

SEC.

1. For what counties or corporations and by what justices.
2. Terms of the court.
3. Jurisdiction.

SEC.

4. What matters are cognizable only at a quarterly term.
5. Practice of the court.

§ 1. For every county and for each of the corporations of *Richmond, Norfolk, Petersburg, Fredericksburg, Lynchburg, Staunton, Williamsburg, Winchester* and *Danville*, and for every other corporation in which the power of holding courts has been or shall be vested by law, there shall be a court called the court of such county or corporation. It shall be held by the justices of the county or corporation, or any four or more of them, except where it is otherwise expressly provided.

1 R. C. p. 244,
ch. 71, § 1, 9, 10,
11.
1829-30, p. 100,
ch. 99, § 4.
1841-2, p. 88, ch.
82.
1842-3, p. 47, ch.
69.

* For the origin of these courts, see *ante* p. 243, note to ch. 48, and Hen. Stat. vol. 1, p. 185 to 187, 224 and 272; they were styled *monthly* courts until 1642-3, when being reduced to the number of six yearly, they were called *county* courts. Id. 273. If occasion required, they were held oftener than every two months. Id. 305, 448, 462. In 1661-2, a precise day of each month was fixed for the sessions. Id. vol. 2, p. 70. In 1634, when the country was divided into 8 shires, it was provided that one of the council should attend and assist in each court of shire. Id. vol. 1, p. 224. In 1661-2, it was enacted that the governor and one of the council, or, if the governor was hindered, two of the council for every river yearly in August should sit judge in all the county courts and determine causes in them by action or reference from a preceding court in the county; but no councillor was to go the circuit on the river wherein he inhabited. Id. vol. 2, p. 64-5. Appeals made after the general court in March were referred to the governor or itinerary councillors in the circuit from whose sentence there might be an appeal to the general court or the assembly. Id. 65. The act for itinerary judges was soon repealed, and the councillors disabled from voting or determining any matter in the county courts. Id. 179, 358.

The act of 1705 required the county courts to be held monthly according to the ancient usage and provided that they should consist of eight or more justices for every court, four of whom should be sufficient to hear and determine causes. Id. vol. 3, p. 504-5. In 1748 it was provided that there should be only four courts in every year in each of the counties of *Brunswick, Fairfax, Lunenburg, Frederick, Albemarle* and *Augusta*. Id. vol. 6, p. 201. This was changed as to some of these counties upon their division. Id. vol. 7, p. 420. In October 1785, the act for reforming the county courts established in each county quarterly terms for certain classes of cases, and terms in the other months for other business. Id. vol. 12, p. 32, 467. The several acts concerning the county and other inferior courts were reduced into one by the act of 1792, in 13 Hen. Stat. p. 449, and the act of 1819 in 1 R. C. ch. 71, p. 244, at which page is a note of Mr. Leigh as to those courts.

1 R. C. p. 246, ch.
71, § 5, 8, 12.
1819-20, p. 35, ch.
44; p. 36, ch. 47.
1822-3. p. 17, ch.
16.
1824-5, p. 34, ch.
41.
1828-9, p. 30, ch.
29, § 2.
1830-31, p. 77, ch.
16.
1833-4, p. 71, ch.
52.
1847-8, p. 59, ch.
84.

See ante, p 98,
ch. 16, § 4.

1 R. C. p. 246, ch.
71, § 7.

1 R. C. p. 247, ch.
71, § 8, 12, 13, 14.
1828-9, p. 30, ch.
29, § 1.
1829-30, p. 26, ch.
22.

3 H. & M. 565.
7 Leigh 63.

1 R. C. p. 260, ch.
71, § 76.

§ 2. There shall be in four of the months of every year a quarterly term of every such court and in every other month a monthly term thereof. Every such term shall commence on such day as may be prescribed by the laws in force the day before this chapter takes effect, and may continue, if it be a monthly term, not exceeding six days, and if it be a quarterly term, not exceeding twelve days. The court may from time to time change the day for the commencement of the terms thereof or any of them, all the acting justices of the county or corporation being first summoned, and a majority concurring in such change. The clerk of such court, within thirty days after any such change, shall send a copy of the order making it to the clerk of the house of delegates, and if he fail to do so shall forfeit fifty dollars.

§ 3. The court of a county or corporation shall have jurisdiction to hear and determine all cases at law or in chancery within such county or corporation which are now pending or may hereafter be brought in said court, except criminal causes against free negroes charged with felonious homicide, or any felony, the punishment whereof may be death, and against white persons, charged with any offence, the punishment whereof may be death or imprisonment in the penitentiary; and except civil causes to recover property or money, not of greater value or amount than twenty dollars, exclusive of interest, and except such cases as are by law specially assigned to some other tribunal. The said court shall also have jurisdiction to hear and determine all motions and other matters made cognizable therein by any statute; and where a motion to recover money is allowed in a county or corporation court, otherwise than under the fifth section of chapter one hundred and sixty-seven, such court may hear and determine the same, although it be to recover less than twenty dollars.

§ 4. In a county or corporation court cases of *caveat*, pleas of the commonwealth, such motions as are provided for by the fifth section of chapter one hundred and sixty-seven, and actions at law, shall be cognizable only at a quarterly term thereof, except that the hustings court of the city of *Richmond* shall have cognizance of pleas of the commonwealth at its monthly terms. All other matters or things, authorized by law to be done by or in such court, may be done either at a monthly or quarterly term.

§ 5. The proceedings of the county and corporation courts shall conform, as nearly as may be, to the practice of the circuit courts in like cases, except in cases where it is otherwise provided by law.

CHAPTER CLVIII.

OF THE CIRCUIT COURTS.*

SEC.

1. } What circuit courts there are, and
2. } their jurisdiction.
3. }
4. } Regular terms; when and by whom
7. } held.
5. } Special terms; when and by whom
6. } held, and for what cases.

SEC.

8. Compensation of judge sitting in another circuit.
9. Place of residence of the judges.
10. Power to exchange circuits.

What circuit courts there are, and their jurisdictions.

§ 1. The state shall continue to be divided into circuits; and for the city of *Williamsburg* and county of *James City*, and for every other county except *Henrico*, and for each of the corporations of *Norfolk*, *Petersburg* and *Lynchburg*, a circuit court shall continue to be held twice in every year by the judge of the general court who, under the laws in force before this chapter takes effect, had been elected for and assigned to the circuit composed in part of such county or corporation. The court to be so held shall be called the circuit court of such county or corporation, or of such city and county as the case may be, and such court and the judge thereof shall respectively have and perform all the jurisdiction, powers and duties which under the said laws would have been had or should have been

1 R. C. p. 226, ch. 69, § 1; p. 231, § 10.
1830-31, p. 42, ch. 11; p. 46, § 15; p. 49, § 26.
1832-3, p. 41, ch. 64.

3 Leigh 813.
4 Leigh 308, 664.

* An act was passed in 1784 for the establishment of courts of assize, Hen. Stat. vol. 11, p. 422. But it never went into operation. It was first suspended and then repealed. Id. vol. 12, p. 45, 267, 497. It was succeeded by the act establishing district courts of law. Id. p. 532, ch. 39; p. 644, ch. 1; p. 730, ch. 67. Those district courts, after being in operation about 20 years, were abolished in 1809, under the acts establishing a superior court of law in each county, 1807-8, p. 5, ch. 3; p. 10, ch. 14; 1808-9, p. 9, ch. 6. The several acts concerning the superior courts of law were reduced into one by the act of 1819, in 1 R. C. p. 227, ch. 69.

In 1777, an act passed establishing a high court of chancery for the state, Hen. Stat. vol. 9, p. 389, ch. 15. When first established it consisted of three judges, but the number was reduced to one by an act of 1788: Id. vol. 12, p. 767. The jurisdiction of this court extended over the whole state till 1802, when the state was divided into three districts, and a superior court of chancery established for each district, 1801-2, p. 12, ch. 14. The places of holding these courts were *Richmond*, *Williamsburg* and *Staunton*. In 1812, the *Staunton* district was divided into four districts; the judge previously assigned to the *Staunton* district was to hold courts for two of these, to wit: at *Staunton* and *Wythe* court-house; and a new judge was to hold courts for the two others, to wit: at *Winchester* and *Clarksburg*, 1811-12, p. 19, ch. 15. In 1814 the *Richmond* and *Williamsburg* districts were divided into four districts; the judge previously assigned to the *Richmond* district was to hold courts for two of these, to wit: at *Richmond* and *Lynchburg*, and the judge previously assigned to the *Williamsburg* district was to hold courts for the other two, to wit: at *Williamsburg* and *Fredericksburg*, 1813-14, p. 44, ch. 16. Under a subsequent act of the same year, the judge of the *Staunton* and *Wythe* districts was for certain counties to hold a court at *Greenbrier* court-house, 1813-14, p. 81, ch. 33. The acts concerning the superior courts of chancery were reduced into one by the act of 1818, in 1 R. C. p. 196, ch. 66.

The superior courts of law held by 15 judges, and the superior courts of chancery held by 4 judges, were abolished by the act of the 16th of April 1831, which divided the state into 20 circuits held by that number of judges, and established a circuit superior court of law and chancery in each county and in certain corporations. 1830-31, p. 42, ch. 11.

performed by the circuit superior court of law and chancery of such county or corporation, or of such city and county, or by the judge thereof respectively, except so far as is otherwise provided by this act.

1836-7, p. 38, ch. 61.
1840-41, p. 65, ch. 48.
1841-2, p. 44, ch. 70.
1845-6, p. 57, ch. 71, § 3.

§ 2. For the county of *Henrico* a circuit court shall continue to be held by the judge elected under the act passed on the twenty-fifth day of February eighteen hundred and thirty-seven, entitled "an act to establish a circuit superior court of law and chancery for the county of *Henrico* and city of *Richmond*," but it shall be called the circuit court of law for the county of *Henrico*; and a circuit court shall continue to be held by the judge elected under the act passed the thirteenth day of March eighteen hundred and forty-one, entitled "an act creating a circuit superior court of chancery in the twenty-first judicial circuit, and for other purposes," but it shall be called the circuit court of chancery for the county of *Henrico*. And each circuit court so to be held, and the judge thereof, shall respectively have and perform all the jurisdiction, powers and duties, which under the laws in force on the day before this chapter takes effect would have been had or should have been performed by such judge, or the court which he held respectively. And when a vacancy shall happen in the office of one of the said judges,* all his jurisdiction, powers and duties shall devolve on the other; and the court thereafter to be held by him shall be thenceforth called the circuit court of the county of *Henrico*.

1 R. C. p. 231, ch. 69, § 10.
1830-31, p. 49, ch. 11, § 27.

1 R. C. p. 230, ch. 69, § 9, 11; p. 201, ch. 66, § 27.
1830-31, p. 47, 8, ch. 11, § 22, 23, 24, 28.
1841-2, p. 140, § 78.

§ 3. The circuit court of every county or corporation shall have jurisdiction, not only of all matters made cognizable in such court by any statute, but also, concurrent with the court of such county or corporation, in all cases in chancery and all actions at law, and in all prosecutions for misdemeanor except where it is otherwise expressly provided.

Terms, regular and special.

1822-3, p. 19, ch. 19.
1830-31, p. 49, § 27.
1836-7, p. 38, ch. 61.
1839, p. 37, ch. 57.
1840-41, p. 65, ch. 48.
1841-2, p. 44, ch. 70.
1845-6, p. 57, ch. 71, § 5.

§ 4. The days for the commencement of the regular terms of each circuit court, the numbers of such terms in every year, the counties and corporations composing each circuit, the number of the circuits, and the circuits to constitute a district, shall be according to the laws in force on the day before this chapter takes effect.

1 R. C. p. 234, § 28; p. 242, § 73.
1827-8, p. 29, ch. 28.

§ 5. If any term of a circuit court is to end, or has ended, without despatching all its business, or if there be a failure to hold any term, the judge of such circuit, or if he fail to do so, or have died, the other judge of the same circuit or district, shall, by an order entered in such court, or by a warrant directed to

* This event has occurred. Judge *Nicholas* died on the 18th of August 1849. In page 12 of a special report, made under resolutions adopted by the house of delegates on the 1st of February 1848, the revisors said, "In *Henrico* and *Richmond* \$2000 is now paid to each of the two judges. If the duty of the two be devolved on one, it seems to us, it would be proper to fix his salary at not less than \$2,500." It has not yet been so fixed.

the clerk, appoint a special term thereof, and prescribe in such order or warrant whether a grand jury or any *venire* is to be summoned to attend the said term. The clerk shall inform the attorney for the commonwealth and the sheriff or sergeant of such appointment, post a copy of the order or warrant at the door of the courthouse, and issue all proper process returnable to such special term; and the sheriff or sergeant shall execute such process and summon a grand jury, if by such order or warrant the same be prescribed.

§ 6. At any such special term any cause, civil or criminal, may be tried, which could lawfully have been, but was not, tried at the last preceding term that was or should have been held, and any motion cognizable by such court may be heard and determined, whether it was pending at the preceding term or not. Every such term may be held by the judge of the circuit, or, if he be dead or absent, by the other judge of the same circuit or district, or, if neither be present, by any other circuit judge who may be present. And it may be held, part of its session by one judge and part of it by another.

§ 7. In case of the death of any circuit judge, the judge of the other circuit in the same district, or any other circuit judge, with his assent, may likewise hold the regular terms of the courts of the circuit in which the judgeship is vacant, until the vacancy is filled or other provision for the case made by law.

§ 8. Any judge of one circuit, sitting in another, under either of the three preceding sections, shall, in addition to his annual salary, receive ten dollars per day for each day of such session, and mileage for travel.

Residence of judge and power of exchanging circuits.

§ 9. Each of the judges of the circuit court of *Henrico* shall reside in the city of *Richmond*, or within five miles thereof, and every other circuit judge shall reside within the district of which his circuit forms a part; except that where the circuits are rearranged after the election of a judge, he shall not be compelled to change his residence because of such re-arrangement.

§ 10. Any two circuit judges may at any time make an exchange with each other of their respective circuits for a period not longer than one year, by an agreement recorded in the court in which each of them shall first sit under such exchange; and without a formal exchange of circuits, if any judge of a circuit court fail to attend a regular term of his court, or be prevented from sitting during the whole term, or be so situated in respect to any cause pending in said court, as in his opinion to make it improper for him to try it, any other circuit judge may hold said court either for the whole term or any part thereof.

CHAPTER CLIX.

OF THE GENERAL COURT.*

SEC.

1. Who are judges thereof.
2. By whom it is held; provision where judges are interested, or for other reason unable to hear a case.

SEC.

3. } Jurisdiction of the court.
4. }
5. Its terms.
6. Its officers.

1 R. C. p. 219,
ch. 67, § 1.
1830-31, p. 39, ch.
7, § 1.

1834-5, p. 32.
1847-8, p. 51, ch.
68, § 2.

1 R. C. p. 205,
§ 48.

1 R. C. p. 221,
ch. 67, § 5.

Id. p. 222, § 6.

1830-31, p. 39,
ch. 7, § 2.
1831-2, p. 41,
ch. 48.
1834-5, p. 32, ch.
41, § 2.

1 R. C. p. 220, § 3.

§ 1. All the judges of this state shall be judges of the general court, except the judges of the supreme court of appeals.

§ 2. The five judges of the general court, who, for the time being, shall stand first in commission with respect to precedence and seniority, shall hold the sessions thereof; except that if a majority of the said five be interested in, or from sickness or other reason unable to hear any case therein, the said court, or such of said five judges as may be present (if a majority be not in attendance,) may have the fact entered of record, and summon such and so many of the other judges of the general court as, with those of the five not so disabled, will make up that number, and the judges so summoned, and those of the said five not so disabled, shall hold the session of the general court when any such case is heard and determined.

§ 3. The general court shall have jurisdiction in all matters pending therein when this chapter takes effect, and in all other matters in which jurisdiction may be conferred on it by this or any future act.

§ 4. It may issue writs of *mandamus* and prohibition to the circuit courts.

§ 5. There shall be two terms of the general court in each year, one to commence on the last Monday in June, and the other on the first Monday in December.

§ 6. The general court shall appoint, from time to time, a crier and a tipstaff, who shall be removable at pleasure.

* For the origin of the general court, and an account of it until the period of the Revolution, see vol. 1 of *Robinson's Rep.* pages iii. iv. of preface. Suits in chancery which then remained pending in the general court, were, upon the establishment of the high court of chancery, transferred thereto. Hen. Stat. vol. 9, p. 396; and appeals from the general court to the king in council, not decided, were transferred to the court of appeals. Id. 525. Under the act of October, 1777, establishing a general court, (9 Hen. Stat. p. 401,) this court had a large jurisdiction, but of most of this it was deprived by the act of October, 1788, establishing district courts. 12 Hen. Stat. p. 730. It was however still left, and has since continued, the supreme criminal tribunal in *Virginia*. The acts concerning the general court were reduced into one by the act of 1792, in 13 Hen. Stat. p. 422, and the act of 1818, in 1 R. C. of 1819, p. 219.

CHAPTER CLX.

OF THE COURT OF APPEALS.*

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| <p>SEC.</p> <ol style="list-style-type: none"> 1. Consists of president and four other judges. 2. When the president is absent, who presides. 3. Jurisdiction of the court. 4. Times and places of session. 5. Business to be done at <i>Lewisburg</i>. 6. Business at <i>Richmond</i>. 7. Transfer of causes from one place to the other. 8. As to cases of prohibition or <i>mandamus</i>. 9. Special court of appeals established at <i>Richmond</i>. 10. Its terms. 11. Docket of causes to be tried by it. | <p>SEC.</p> <ol style="list-style-type: none"> 12. Its control over the docket. 13. What cases supreme court tries when special court is, and when it is not, in session. 14. Provision for case put on docket of special court when majority of its judges cannot try it. 15. Provision for special court differently constituted; either at <i>Richmond</i> or <i>Lewisburg</i>. 16. Clerk of supreme court of appeals acts as clerk of special court. 17. How decisions of special court are carried into execution. 18. As to tipstaff and crier. |
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Supreme court of appeals.

§ 1. The supreme court of appeals shall continue as now organized, and consist of the five judges thereof now in commission, and as vacancies occur, they shall be filled, so that there shall be a president and four other judges of said court. 1 R. C. p. 189, ch. 64, § 1. 1830-31, p. 37, ch. 4, § 1.

§ 2. In the absence of the president, the eldest judge in commission present shall be the presiding judge.

Its jurisdiction; the times and places of its sessions; and the business at each place.

§ 3. The said court shall have jurisdiction to issue writs of *mandamus* to the general court, or to any superior court when necessary to carry into effect any judgment or decree of its own or of any special court of appeals, and jurisdiction to issue writs of prohibition to the general court, and of all such matters as are now pending in said court of appeals, or may be legally brought before it. 1 R. C. p. 190, § 2. 1848-9, p. 41, ch. 72.

§ 4. The said court shall hold a session annually at *Lewisburg*, in the county of *Greenbrier*, to commence on the first Monday in July, and to continue at least ninety days, if the 1 R. C. p. 189, § 1. 1830-31, p. 37, ch. 4, § 2. 1834-5, p. 31, ch. 40.

* Upon the establishment of monthly courts, appeals were allowed to the governor and council. Hen. Stat. vol. 1, p. 125. They held quarterly courts (id. 174,) from which appeals lay to the assembly. Id. 272, 304, 345, 398, 477, 515, 519, 541; vol. 2, p. 65, 362, 397; id. vol. 3, p. 300, 514. In 1683, a direction was received from the king that there should be no appeal from any order of the governor and council to the assembly; nor under £100 to the king in council. Id. vol. 3, p. 550, and p. 489. Further as to appeals before the Revolution, see the preface to vol. 1 of *Robinson's Reports*, p. iii. iv.

As to the acts (after the Revolution) establishing a supreme court of appeals, and special courts of appeals, see the report made by the revisors in Jan. 1849, an extract from which is in 5 Grat. p. 564, 574. The several acts concerning these courts were reduced into one by the act of 1792 in 13 Hen. Stat. p. 405, and the act of 1818, in 1 R. C. of 1819, p. 189 ch. 64.

business be not sooner despatched; and another session at the state courthouse in the city of *Richmond*, to commence at such time, and to be divided into such terms, as the court has directed, or may from time to time direct, and to continue at least one hundred and sixty days unless the business be sooner despatched.

1830-31, p. 122,
§ 2.
1835-6, p. 33, ch.
42.
1844-5, p. 51, ch.
42.

§ 5. The court at its sessions at *Lewisburg* shall hear and determine all appeals, writs of error or *supersedeas* pending there when this chapter takes effect, or which may be brought to the court of appeals from or to decrees, judgments, sentences or orders of courts which are held on the western side of the *Blue Ridge* of mountains, except the counties of *Jefferson*, *Berkeley*, *Morgan* and *Frederick*.

1830-31, p. 37, ch.
4, § 2.

§ 6. The said court at its session at *Richmond* shall hear and determine all appeals, writs of error or *supersedeas* pending there when this chapter takes effect, or which may be brought to the court of appeals from or to decrees, judgments, sentences or orders of any court held on the eastern side of the said *Blue Ridge*, or in the counties of *Jefferson*, *Morgan*, *Berkeley* or *Frederick*.

Id. and § 6.

§ 7. By consent of the parties or their counsel, any cause pending in said court at one place may be transferred to the other, there to be heard and determined.

§ 8. Writs of prohibition or *mandamus* from the court of appeals to any superior court shall issue and be tried at the place of session of said court of appeals, at which writs of error to such superior court are to be tried.

Of special courts of appeals.

1847-8, p. 51, ch.
68, § 2.
5 Grat. 518.

§ 9. The five judges of the general court who, for the time being, are first in commission in respect to precedence and seniority, shall constitute a special court of appeals, to be holden at the state courthouse in *Richmond*.

1847-8, p. 51, ch.
68, § 3.

§ 10. Said special court of appeals shall annually commence its session on the day after the general court adjourns at its December session. It may adjourn from time to time and may sit as often and as long as it may consider it can properly sit without interfering with the duties of the judges as judges of the general court and circuit courts; except that it shall not sit while the court of appeals is in session at *Lewisburg*.

Id. § 4.

§ 11. The clerk of the court of appeals at *Richmond* shall annually, in December, before such special court commences its session, make a docket of all causes which on the day of such commencement shall have been pending in the court of appeals more than two years without being heard and are ready for hearing, exclusive of cases which any party or his counsel objects to being placed on said docket. But if the number of cases so pending and ready exceed seventy, there shall only be placed on said docket the seventy of them,

(wherein there is no such objection,) which have been longest pending in said court.

§ 12. The said special court shall have control over the said docket, and may correct any mistake therein. It may order to be struck from it any case which should not be, and order to be put on it any case which should be, thereon. And it shall proceed to hear and determine all causes on its docket as so made out or corrected.

§ 13. After such special court commences its session, the supreme court of appeals shall during the winter and spring proceed to hear and determine such of the causes depending therein as may not be on the docket of the special court of appeals. And in the interval between the commencement of the session of the supreme court of appeals in the fall and the adjournment of the general court, the said supreme court of appeals at *Richmond* may hear and determine any cause put on the docket of the special court of appeals as aforesaid, which has not been heard by it. 1847-8, p. 51, ch. 68, § 5.

§ 14. If a majority of the judges of said special court of appeals be interested in, or from sickness or other reason unable to hear and determine a case on its docket, the said court, or any one of said judges, if a majority be prevented by sickness from attending, shall order the fact to be entered of record, and the case to be struck from its docket, and thereafter the supreme court of appeals may hear and determine such case. Id. § 6.

§ 15. If a majority of the judges of the supreme court of appeals be interested in, or from sickness or other reason cannot sit to hear and determine a case so stricken from the docket of the special court, or a case depending in the supreme court of appeals at *Lewisburg* or *Richmond*, that fact shall be entered of record and certified to the special court of appeals at *Richmond*, which shall appoint from among the judges of the said special court so many as, with the judges of the supreme court of appeals not so disabled, will make the number five; and they shall together hold a special court of appeals to hear and determine such case, at such time as a majority of them shall see fit. The place of holding the same shall be *Richmond* or *Lewisburg*, according as the cause may be depending at the one place or the other. If there be not so many as three of said judges of both courts able to sit in any such case, the said special court of appeals shall select and summon to such place so many of the judges of the circuit courts, as with those who are so able will make the number five, who shall, at the time prescribed in the summons, hold a special court of appeals, and hear and determine such case as aforesaid. 1 R. C. p. 190, § 5, 7; p. 195, ch. 65. 1831-2, p. 39, ch. 47. 1839-40, p. 41, ch. 38. 1847-8, p. 51, ch. 68, § 7.

§ 16. The clerk of the supreme court of appeals at the place at which any special court of appeals is held, shall in person, or by deputy, attend such special court, with the 1 R. C. p. 191, ch. 61, § 6. 1847-8, p. 52, ch. 68, § 8.

records and papers in the cases which it is to hear and determine, and act as the clerk of such special court.

1 R. C. p. 191, ch.
64, § 6.
1847-8, p. 52, ch.
68, § 8.

§ 17. The decisions of such special court shall be certified and carried into execution, as if made by the supreme court of appeals.

Tipstaff and crier.

1 R. C. p. 191, 2,
§ 6, 8.
1820-21, p. 11, ch.
8, § 3.

§ 18. The supreme court of appeals, and each special court of appeals, may appoint a tipstaff and a crier. They shall receive out of the treasury such reasonable compensation as the court may allow, and be removable at its pleasure.

CHAPTER CLXI.

GENERAL PROVISIONS RELATING TO THE COURTS.

SEC.

1. Seals for the courts.
2. Jurisdiction of courts of counties on water courses.
3. By what number of judges a court may be held, and how long it may sit.
4. Power of courts of appeals to prescribe forms of writs, and regulate practice of courts.
5. How proceedings of courts are drawn up, read and signed.
6. Who attends a court as its officer.
7. } Places of holding the courts; when
to } and how place may be changed.
13. }
14. When court fails to meet on the day appointed, or to which it is adjourned.

SEC.

15. Provision to prevent cases from being discontinued when place or day is changed, or court fails to sit.
16. Matters not determined before the end of a term, stand continued, of course.
17. As to a notice, recognizance or process, given, taken or issued, before this act is in force. This act operates no discontinuance of any case. Where books, records and papers, in custody of clerk, remain.
18. As to judgments and decrees of courts no longer existing.

Seals for the courts.

1 R. C. p. 205,
§ 45; p. 243, ch.
70.
1830-31, p. 71,
§ 89.

§ 1. For any court without one the governor shall provide a seal, which shall be deposited with the clerk thereof.

Jurisdiction of courts of counties on water courses.

1 R. C. p. 229,
§ 6.
1830-31, p. 46,
§ 14.

§ 2. Where any river, water course or bay, lies between any counties in this state, the courts for the counties on each side, respectively, shall have concurrent jurisdiction over so much thereof as is opposite to said counties. And the courts for counties lying on the waters bounding the state, shall have jurisdiction respectively over such waters opposite said counties, so far as the jurisdiction of this state extends.

What number of judges may hold a court; how long a court may sit; and rules as to writs and proceedings.

§ 3. The supreme, and every special court of appeals, may be held by any three or more of the judges of such court; and the general court may be held by any three or more of the judges directed to hold the same. Any such court, or any other court, may, at any term, whether regular or special, adjourn from day to day, until the business before it is despatched, or until the end of its term.

1 R. C. p. 189, 90, ch. 64, § 1, 5; p. 229, § 3.
1830-31, p. 37, 45, ch. 14, § 1, 12.
1841-2, p. 43, ch. 69, § 3.
1847-8, p. 52, ch. 68, § 9.
6 Rand. 704.
2 Grat. 594.

§ 4. The supreme court of appeals may, from time to time, prescribe the forms of writs, and make general regulations for the practice of all the courts.

1 R. C. p. 195, § 23.
1 Will. iv. ch. 70, § 11.

§ 5. The proceedings of every court shall be entered in a book, and read in open court by the clerk thereof. In a county or corporation court, the minutes of such proceedings shall be read every day that the court sits, immediately before its adjournment. In every other court, the proceedings of each day shall be drawn up at large and read the next day, except those of the last day of a term, which shall be drawn up and read the same day. After being corrected where necessary, the record shall be signed by the presiding judge or justice.

1 R. C. p. 194, § 10; p. 216, § 106; p. 237, § 46; p. 251, § 19.

Who attends a court as its officer; and at what place it is held.

§ 6. The court of appeals shall not be attended by any sheriff, and a circuit or other court, held only for a corporation, shall be attended by the sergeant of such corporation, who shall act as its officer. In all other cases, the sheriff of the county in which any court shall sit, shall attend it and act as the officer thereof.

1 R. C. p. 236, § 40.
1820-21, p. 11, ch. 8, § 3.
1830-31, p. 48, § 47.
1832-3, p. 43, ch. 64, § 2.

§ 7. The general court, and the circuit courts for the county of *Henrico*, shall sit in the city of *Richmond* at the state courthouse. The circuit court of *Spotsylvania* county may sit at the courthouse thereof, or at the courthouse in *Fredericksburg*, in conformity with the laws now in force. Every other circuit, county or corporation court, for any county or corporation, shall be held at the courthouse of such county or corporation, except where some other place is prescribed by law or lawfully appointed.

1 R. C. p. 247, § 8.
1826-7, p. 53, ch. 61.
1831-2, p. 44, ch. 57.
1832-3, p. 39, ch. 6, § 1 to 7.

§ 8. When the courthouse, prescribed for a circuit court to sit in, is not in a condition to be occupied, such court shall hold its sessions at such place as may be appointed by its order, or by warrant of the judge thereof in vacation, directed to the clerk, and if none be so appointed, at such place as may be appointed by the county or corporation court under the following section.

1833-4, p. 67, ch. 44, § 2.

§ 9. Any county or corporation court, when the acting justices thereof have been summoned to consider the subject under an order of a previous term, or when a majority of the

1825-6, p. 19, ch. 17, § 1, 2.

acting justices is present, may appoint some other place than the courthouse thereof to be, and the same shall be, the place of session of the said court, from a certain day to be specified in the order, until thereafter the courthouse shall be in a condition to be occupied.

Id.
1833-4, p. 67, ch.
44, § 2.

§ 10. A copy of every order of court, or warrant of a judge under the two preceding sections, shall be posted by the clerk of the court at the door of his office, and at the courthouse door, and also at the place so appointed.

1 R. C. p. 189, ch.
64, § 1; p. 219,
ch. 67, § 1; p.
262, ch. 73, § 1, 5.

§ 11. Whenever, by reason of the destruction of any building in which a court is appointed to be held, or by reason of the place of session being in possession of a public enemy, or infected with contagious disease, it shall seem to the governor necessary, he shall, by proclamation, appoint a place at which such court shall be held, so long as such reason may continue, and when the circumstances require it, may postpone the time for holding the court.

Id.

§ 12. No such place of session for a circuit, county or corporation court, shall be without the limits of the county or corporation of which it is the court. And when such place is appointed, because of the destruction of the building in which the court of appeals, special court of appeals or general court was held, the new place of session shall be within the same town with the old.

1 R. C. p. 262, § 1.

§ 13. A copy of such proclamation shall be sent to the clerk, and to each of the judges of any such court, and published in some newspaper at the seat of government, and near the regular place of session of such court.

Where court fails to meet on the day appointed, or to which it is adjourned.

1 R. C. p. 190,
§ 3; p. 199, § 17;
18; p. 219, § 1;
p. 230, § 8; p. 246,
§ 6.
1830-31, p. 47,
§ 21.

§ 14. Though a court be not held on the first day of a term, it may nevertheless be opened on any subsequent day, provided, in the case of a circuit, county or corporation court, the same be done before four o'clock in the afternoon of the third day. If, after a court is opened, it fail to sit on any day, it may nevertheless sit on any subsequent day of the term, provided, in the case of a circuit, county or corporation court, there be not more than three consecutive days of such failure.

Provisions to prevent cases from being discontinued; and as to custody of records and papers.

1 R. C. p. 199,
§ 18; p. 219, § 1;
p. 230, § 8; p. 234,
§ 28; p. 246, § 6;
p. 262, § 4.
1825-6, p. 20, ch.
17, § 3.
1830-31, p. 47,
§ 21.

§ 15. When the place for holding any court, or the day for commencing any term, is changed, or when a court fails to sit on any day appointed for it, or to which it may have adjourned, there shall be no discontinuance, but every notice, recognizance or process given, taken or returnable to the day on which the failure occurred, or to any day between that day and the next that the court may sit, or to the day and place as it was before

such change, and all matters ready for the court to act upon if it had been held on any such day, shall be in the same condition and have the same effect, as if given, taken or returnable, or continued, to the substituted term or place, or to the next day of the same term that the court may sit, or to the next court in course, as the case may be.

§ 16. All causes upon the docket of any court, and all other matters ready for its decision, which shall not have been determined before the end of a term, whether regular or special, shall, without any order of continuance, stand continued to the next term.

1 R. C. p. 199, § 18; p. 219, § 1; p. 230, § 8; p. 246, § 6; p. 262, § 2, 4. 1830-31, p. 47, § 21.
2 Va. Cas. 61, 62, 470.

§ 17. Although a notice, recognizance or process shall have been given, taken or issued, before the day prescribed for the commencement of this act, it may nevertheless be given, taken or returnable to a day after such commencement, or to a court established by this act, or the clerk's office of such court, in like manner as if this act had commenced before the same was given, taken or issued. And nothing in this act shall operate to discontinue any cause or matter, civil or criminal, which shall be depending and undetermined in any court on the day before this act takes effect; but every such cause and matter shall be proceeded in, tried and determined in such court, or in the court which succeeds to or has its jurisdiction. The papers and records of such causes and matters, and all books, records and papers whatever, which on the said day may be in the custody of any clerk of a court, shall remain in custody of the clerk of the same, or of such court as succeeds to or has its jurisdiction.

1 R. C. p. 243, ch. 69, § 75. 1830-31, p. 72, 75, § 94, 95, 96, 99. 1836-7, p. 43, 4, ch. 53, § 13.

As to judgments and decrees of courts no longer existing.

§ 18. Every judgment, decree or order entered in a court which shall have ceased to exist, shall be executed by the court in custody of whose clerk the record of such judgment, decree or order, may be under the preceding section, or by means of process issued from the clerk's office of the last mentioned court. And to such court shall be certified every judgment, decree or order of the court of appeals touching any judgment, decree or order so entered, and the case shall be proceeded in as if such court had rendered the same.

1 R. C. p. 243, ch. 69, § 75. 1830-31, p. 75, § 99.

CHAPTER CLXII.

OF JURIES GENERALLY.

SEC.

1. Qualification of jurors.
2. Who exempt from serving on a jury.
3. No person to be a juror at any

SEC.

- term at which he has a matter of fact pending for trial by jury.
4. No exception to a juror allowed after he is sworn.

SEC.	SEC.
5. Court may order its officers to summon jurors.	8. When and how a special jury is allowed.
6. Penalty on sheriff for not making proper summons; and on person summoned for failing to attend.	9. By consent trial by jury may be waived or the number reduced.
7. Power of sheriff of <i>James City</i> to summon jurors in <i>Williamsburg</i> .	10. As to views.
	11. } Conduct of jurors and sheriff.
	12. }

Who are qualified, disqualified, or exempt as jurors; when exception to juror must be made.

1 R. C. p. 264, ch. 75, § 1, 12.
1847-8, p. 140, ch. 19, § 2; p. 148, ch. 21, § 5.

§ 1. No person shall be qualified to serve upon a petit jury in any proceeding, civil or criminal, unless he is twenty-one years of age and owns property, real or personal, of the value of one hundred dollars.

1838, p. 68, ch. 85.
1839, p. 15, ch. 17, § 4.
1839-40, p. 44, ch. 49.
1845-6, p. 40, § 9.
1846-7, p. 16, ch. 15, § 5; p. 32, § 9.
Ante, p. 120, ch. 22, § 2, 3.

§ 2. The following persons shall be exempt from serving on a jury: The governor of the state, practising attorneys, officers of the fire department of a town, officers of any court, and all those mentioned in the second and third sections of chapter twenty-second as exempt from militia duty, except school commissioners, trustees of free schools, officers of the militia, and officers and members of volunteer companies.

§ 3. No person shall be admitted to serve as a juror, except in trials for felony, at any term of a court during which he has any matter of fact to be tried by a jury, which shall have been, or is expected to be tried during the same term.

1 R. C. p. 266, § 12.
11 Leigh 714.

§ 4. No exception shall be allowed against any juror after he is sworn upon the jury, on account of his estate or age or other legal disability.

By whom and how juries are summoned and empaneled; penalties on sheriffs and persons summoned.

1 R. C. p. 266, § 10, 11.

§ 5. When any court thinks it necessary, it may order its sheriff or other officer to summon any number of jurors to attend forthwith, or at any subsequent day of the term.

Id.

§ 6. If any sheriff fail to summon jurors according to the preceding section, or shall knowingly summon persons not qualified to serve or exempt from serving as jurors, he shall be fined by the court not exceeding twenty dollars; and if any person so summoned fail to attend as required, without sufficient excuse, he shall be fined by the court eight dollars.

Id. § 19.

§ 7. The sheriff of the county of *James City* may summon the inhabitants of the said county in any part of the city of *Williamsburg*, to serve on juries in the said county.

§ 8. Any court may, except in case of felony, allow a special jury, which shall be formed as follows: A panel shall be made of twenty-four qualified jurors, free from special cause of challenge, from which eighteen shall be chosen by lot. The parties, or their counsel, thereupon, beginning with the plaintiff, shall alternately strike off one from the eighteen so

chosen, until the number is reduced to twelve, who shall compose the jury for the trial of the case.

Trial by jury may be waived, or the number reduced by consent.

§ 9. In any case except a case of felony, in which a trial by jury would be otherwise proper, the parties or their counsel, by consent entered of record, may waive the right to have a jury, and thereupon the whole matter of law and fact may be heard and determined, and judgment given by the court; or by like consent the jury may consist of seven, and in that case a verdict shall be as valid and have the same effect as if it had been found by a jury of twelve.

Views.

§ 10. The jury may in any case, at the request of either party, be taken to view the premises or place in question, or any property, matter or thing relating to the controversy between the parties, when it shall appear to the court that such view is necessary to a just decision; provided the party making the motion shall advance a sum sufficient to defray the expenses of the jury, and the officers who attend them in taking the view; which expenses shall be afterwards taxed like other legal costs.

Conduct of jurors and sheriff.

§ 11. A juror knowing any thing relative to a fact in issue shall disclose the same in open court. 1 R. C. p. 266, § 14.

§ 12. After a jury has been empaneled, no sheriff or other officer shall converse with or permit any one else to converse with a juror, unless by leave of the court. Id. p. 267, § 16.

Title 50.

CLERKS, ATTORNEYS AND REPORTER.

CHAP. 163. Of clerks of courts.

164. Of attorneys at law generally.

165. Of the attorney-general, and other attorneys for the commonwealth.

166. Reports of the decisions of the court of appeals and general court.

CHAPTER CLXIII.

OF CLERKS OF COURTS.

SEC.

1. Every court appoints its clerk; his term of office; capable of re-appointment.

SEC.

2. Operation of this chapter on clerks in office when it takes effect.

- | SEC. | SEC. |
|---|--|
| 3. As to clerks of circuit courts of <i>Henrico</i> in office when jurisdiction devolves on one judge. | 16. Power of clerk to administer an oath. |
| 4. As to clerks of court of appeals. | 17. Clerk's duty as to preparing bonds. |
| 5. How clerk may be removed. | 18. As to partition or recovery or assignment of dower in land under judgment, decree or order. |
| 6. How clerk <i>pro tempore</i> may be appointed. | 19. As to keeping execution book. |
| 7. Before term of clerk expires, his successor may be appointed. | 20. As to indexes. |
| 8. Examination of clerk's office. | 21. As to process book; how process, orders and decrees to be served, are delivered or sent out. |
| 9. Justices to be summoned before clerk is appointed. | 22. As to taking process out of post office. |
| 10. Bond of clerk; copy transmitted to auditor; where original is recorded; penalty for not doing what this section requires. | 23. Transmitting to governor a list of acting justices and copies of orders containing nominations. |
| 11. Appointment of deputy clerk. | 24. No duplicate certificate of an allowance to be given, unless ordered by the court; what duplicate must shew; penalty on clerk. |
| 12. Residence of clerk and place of clerk's office. | 25. Report of the business in, and day of session of, the courts. |
| 13. Papers in clerk's office to be preserved therein. | 26. Penalty on clerk for failing to make report; duty of clerk of house of delegates, in such case. |
| 14. Removal of records or papers out of county or corporation prohibited, except in certain cases. | 27. How fines against clerks are recovered. |
| 15. Records and papers open to inspection; clerk's duty to make copies when required. | |

Number of clerks; how appointed; term of office; and how removed.

1 R. C. p. 199,
§ 20; p. 220, § 3.
1830-31, p. 78, ch.
20, § 1, 4.

§ 1. Every court shall appoint its clerk. The term of his office shall be seven years, but he shall be capable of re-appointment from time to time.

§ 2. A clerk of a court in office, the day before this chapter takes effect, shall not, by operation of this chapter, be removed from his office, except as hereinafter provided for in the third and fourth sections, but may act as clerk of said court, or of that which succeeds to its jurisdiction, during the term for which he may have been appointed, unless removed as so provided for.

1840-41, p. 65,
ch. 48.

§ 3. The clerks of the circuit courts for the county of *Henrico*, who shall be in office when the jurisdiction thereof devolves on one judge, may continue to be clerks, respectively, on the law and chancery side as before, until the office of one of them is vacant, after which the court may appoint either of them, or some other person, to be clerk of the court, both on its law and chancery side.

1830-31, p. 38, ch.
4, § 3.

§ 4. There shall continue to be two clerks of the court of appeals; one for the said court at *Richmond*, and the other for the said court at *Lewisburg*.

1 R. C. p. 274,
§ 7.
1830-31, p. 78, ch.
20, § 2.

§ 5. Every court may remove its clerk at any time. But no order for such removal shall be made by a county or corporation court, unless, the acting justices thereof being summoned to consider the subject, a majority of them are present, and two-thirds of those present concur in the order.

When and how clerk, or clerk pro tempore, may be appointed.

1 R. C. p. 274,
§ 8; p. 192, § 8, 9;
p. 221, § 4; p. 232,
§ 18; p. 233, § 22.

§ 6. When the office of clerk is vacant, a clerk *pro tempore* may be appointed by the court, or in the vacation thereof, if it

be a circuit court, by the judge thereof, or if it be the court of appeals, by any three of the judges thereof, or if it be the general court, by any three of the five judges thereof who shall stand first in commission with respect to precedence and seniority. The appointment in vacation shall be in writing, and recorded in the book wherein the proceedings of the court are recorded.

§ 7. Before the term of a clerk expires, his successor may be appointed and qualified to act in the office from the end of the said term.

§ 8. Before any vacancy existing or to occur in the office of clerk shall be filled, the court shall, and at any other time it may, appoint two or more persons to examine the clerk's office. They shall examine the fee books, and the condition of the records and papers in the office, and report whether the clerk has faithfully discharged his duties. The court may allow to each person making such examination not exceeding five dollars a day; which, if the examination be of the clerk's office of a county or corporation court, shall be chargeable on such county or corporation, and in other cases shall be paid out of the treasury.

§ 9. No county or corporation court shall make any appointment of a clerk, other than a clerk *pro tempore*, unless the acting justices of such county or corporation shall have been summoned to attend for the purpose.

Bond of clerk; and appointment of deputy.

§ 10. Every court appointing a clerk, other than a clerk *pro tempore*, shall take from him bond in a penalty not less than three, nor more than ten thousand dollars. Each clerk shall, within two months after the execution of his bond, transmit a copy thereof to the first auditor, and deliver the original as follows: The bond of the clerk of the court of the county or corporation to the clerk of the circuit court, having jurisdiction over such county or corporation; the bond of the clerk of a circuit court of a county or corporation, to the clerk of the county or corporation court thereof; the bond of the clerk of the general court, to the clerk of the court of appeals at *Richmond*; and the bond of the clerk of the court of appeals, whether at *Richmond* or *Lewisburg*, to the clerk of the general court. Every such bond shall, by the clerk to whom it is delivered, be recorded forthwith. Any clerk who shall fail to do what is required of him by this section, or to transmit to the first auditor a copy of any bond within the time prescribed, shall pay a fine of not less than one hundred, nor more than five hundred, dollars. A court may at any time require of, and take from its clerk, a new bond.

§ 11. Any clerk of a court may, with its consent, appoint a deputy, who, during his continuance in office, may discharge any of the duties of the clerk. He may be removed from office by either the clerk or court.

Residence of clerk and place of clerk's office.

1 R. C. p. 274,
 § 5; p. 200, § 21;
 p. 233, § 25.
 1830-31, p. 71,
 § 87.
 1832-3, p. 39, ch.
 61, § 2.
 1834-5, p. 148, ch.
 134.

§ 12. There shall be kept in the city of *Richmond*, at the state courthouse, and in the town of *Lewisburg*, at the courthouse of *Greenbrier* county, the clerk's offices of the several courts held at those places, unless any such court shall see cause to direct its clerk's office to be kept elsewhere. The clerk's office of the circuit court of the county of *Spotsylvania* may be kept at such place in the town of *Fredericksburg* as may be prescribed by the said court. The clerk's office of every other circuit, county or corporation court for any county or corporation shall be kept at the courthouse of such county or corporation, unless there shall have been a failure by the proper authority to provide such office there, in which case the clerk's office may be kept at such other place within the county or corporation as the court may direct. Every clerk of any circuit, county or corporation court shall reside within the county or corporation for which such court is held, except where it is otherwise allowed by law.

Clerk's duty to keep records and papers, or make copies.

§ 13. All papers lawfully returned to, or filed in, the clerk's office, shall be preserved therein until legally delivered out.

1 R. C. p. 273,
 § 3, 4.

§ 14. None of the records or papers of a court shall be removed by the clerk, nor allowed by the court to be removed, out of the county or corporation wherein the clerk's office is kept, except on an occasion of invasion or insurrection, where, in the opinion of the court, or in a very sudden case, of the clerk, the same will be endangered, after which they are to be returned so soon as the danger ceases; and except in such other cases as are specially provided for by law. Any clerk violating this section shall forfeit six hundred dollars.

1820-21, p. 104,
 ch. 74, § 1.

§ 15. The records and papers of every court shall be open to the inspection of any person, and the clerk shall, when required, furnish copies thereof, except in cases where it is otherwise specially provided.

Powers and duties generally of clerk.

1 R. C. p. 275,
 § 12.
 4 Grat. 554.

§ 16. Any clerk of a court, or his deputy, may administer an oath in any case wherein an affidavit is necessary or proper as the foundation of an official act to be performed by him.

§ 17. Every clerk shall prepare in a proper manner any bond to be taken by, or given before, him or his court.

1 R. C. p. 65, § 14.

§ 18. The clerk of the court wherein there is any partition of, or assignment of dower in, land under any order, or any recovery of land under judgment or decree, shall transmit to the clerk of the court of each county or corporation, wherein such land is, a copy of such order, judgment or decree, and

of such partition or assignment, and of the order confirming the same, and along therewith such description of the land as may appear in the papers of the cause. And the clerk of the court of such county or corporation shall record the same in his deed book, and index it in the name of the person who had the land before, and also in the name of the person who became entitled under such partition, assignment or recovery.

§ 19. The clerk of the general court, and of every circuit, county or corporation court, shall keep an execution book, in which he shall enter, in each case wherein an execution is issued, the names of the parties, the time of the judgment, the amount thereof, or a reference to the page of the order book wherein the amount appears, the date of each execution, nature thereof, when returnable, and, if return be made thereon, the nature of such return. ^{1 R. C. p. 275, § 11. 1830-31, p. 79, ch. 21. 1 Wash. 94.}

§ 20. The clerk of every court shall have an index to each book he is required to keep, making convenient reference to every order, record or entry therein. Every execution, and every judgment or decree for money, shall be indexed as well in the name of the person against whom, as in the name of the person in whose favour, the same is. ^{1830-31, p. 79, ch. 21.}

§ 21. The clerk of every county or corporation court from whose office may be issued any process, original, mesne or final, or any order or decree to be served on any person, shall, unless the party interested or his attorney, direct otherwise, deliver the same to the sheriff or other officer of the county or corporation for which the court is held, if it is to be executed therein, and if it is to be executed in any other county or corporation, shall enclose the same to the sheriff or other officer thereof, put it in the post office and pay the postage thereon. The clerk shall keep a process book, wherein there shall be an entry of every such process, order or decree, shewing its nature, date and return day, the person to whom, and time when it was delivered, or if it was mailed the time thereof, and the person to whom it was enclosed. From any officer to whom there is such delivery, the clerk shall take a receipt in his process book. ^{1 R. C. p. 211, § 71. 1830-31, p. 67, § 73. 1834-5, p. 37, ch. 54. 1838, p. 70, ch. 90.}

§ 22. If there come directed to a clerk, by mail, a letter with an endorsement on the envelope of the parties' names and the nature of the process enclosed, he shall take the same out of the post office and pay such postage as may be payable thereon. ^{1830-31, p. 67, § 73. 1832-3, p. 43, ch. 90.}

§ 23. The clerk of the court of every county shall transmit to the governor, on or before the thirty-first day of December in each year, a list of the justices acting in the said county on the preceding first day of November, and shall transmit to the governor a copy of every order containing any nomination to him, within a month after the date of such order. If he fail to do either, he shall forfeit one hundred dollars. ^{1819-20, p. 14, ch. 15.}

§ 24. There shall be no duplicate certificate of any allowance of a court to be paid out of the treasury, unless the court, ^{2 R. C. p. 60, § 10.}

upon proof by the oath of the party or otherwise of the loss or destruction of the original certificate, shall order a duplicate; it shall shew on its face that it is a duplicate issued by order of the court. Any clerk who shall issue a duplicate otherwise, shall forfeit one hundred dollars.

Report of the business in, and days of session of the courts.

1836-7, p. 40, ch.
64.
1838, p. 69, ch.
68.

§ 25. The clerks of the court of appeals, and the clerk of each circuit court, shall annually, before the first day of November, make to the clerk of the house of delegates a report of the number of days the court was in session within the year ending on the last day of August preceding, and the state of the business in the court during the said year, in the following form:

ACTIONS AT LAW.					SUITS IN EQUITY.			PROSECUTIONS.				DAYS OF SESSION.			
No. commenced.	No. pending.	No. decided.	No. removed from other courts.	No. removed to other courts.	No. commenced.	No. pending.	No. interlocutory decrees.	No. final decrees.	No. removed from other courts.	No. removed to other courts.	No. commenced.	No. pending.	No. decided.	No. nolle prosequis.	Changes of venue from the court.
															Changes of venue to the court.
												Fall term.			
												Spring term.			
												Intermediate or special terms.			
												Total.			

The report shall shew, as to each of the said classes of cases, the number of each kind during the whole year, except that the number pending will be of those pending at the end of the year. In the pending there shall be included cases at rules, as well as on the court docket. In the actions decided, there shall be included judgments by default in the office, which have become final. But there shall not be included judgments on forthcoming bonds, or on notices of motion, other than notices authorized by section fifth of chapter one hundred and sixty-seven. The clerk may append any remarks, and therein give any information which he sees fit, as to any case in his court.

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§ 26. The clerk of the house of delegates shall report to the first auditor every clerk who may fail to make such report. Any clerk so failing, may be fined not exceeding fifty dollars.

How fines against clerks are recovered.

1 R. C. p. 61,
§ 11.
1819-20, p. 14, ch.
15.
1838, p. 41, ch.
64, § 2.

§ 27. Any fine or forfeiture under this chapter, may be recovered in like manner as if this were a chapter under the twelfth title.

CHAPTER CLXIV.

OF ATTORNEYS AT LAW GENERALLY.*

SEC.

1. Certificate and license necessary to enable person to practise law.
2. Person licensed in adjoining state may practise here.
3. Attorney must qualify in each court in which he practises.
4. Penalty for practising without being licensed and qualified; in what cases penalty is not incurred.
5. Power of court to supersede license of attorney convicted of felony.

SEC.

6. How in other cases license may be suspended or annulled by a court.
7. Right of court to require security for good behaviour, or to fine for contempt, not affected.
8. Certain persons forbid to practise law in particular courts.
9. } Liability of attorney to his client.
10. }
11. Attorney's fee.

§ 1. Any three judges of the superior courts of this state, may grant a license in writing to practise law in the courts thereof, to any person who shall on examination be duly qualified, and who shall produce to them a certificate of the court of the county or corporation where he has resided for one year next preceding, that he is a person of honest demeanour, and is over twenty-one years of age. ^{1 R. C. p. 267, ch. 76, § 1.}

§ 2. Any person duly licensed and practising as counsel or attorney at law in any state adjoining this, or in the district of *Columbia*, may practise as such in the courts of this state. ^{Id. p. 268, § 4.}

§ 3. Every such person shall produce, before each court in which he intends to practise, satisfactory evidence of his being so licensed, and take an oath that he will honestly demean himself in the practice of the law, and to the best of his ability execute his office of attorney at law; and also when he is licensed in this state, take the oath of fidelity to the commonwealth. <sup>Id. § 2, 4.
1 Munf. 468.
2 Va. Cas. 222.</sup>

§ 4. If any person shall practise law in any court of this state without being so licensed, or without taking the oaths required, he shall forfeit one hundred and fifty dollars for each case in which he shall appear as attorney, one-half whereof shall be to the informer. But this penalty shall not be incurred by an attorney for instituting suits in the superior courts, after obtaining a license, if he shall qualify at the first term thereafter of the circuit court of any county or corporation of the circuit in which he resides. <sup>1 R. C. p. 268, § 3.
1842-3, p. 54, ch. 77, § 2.</sup>

§ 5. Any court before which any attorney has been qualified, on proof being made to it that he has been convicted of any felony, may supersede his license. ^{1 R. C. p. 268, § 5.}

§ 6. If any circuit court observes any mal-practice therein by any attorney, or if complaint be made to any circuit court of mal-practice by any attorney therein, or in the court of the <sup>Id. § 6.
6 Leigh 619.</sup>

* For the early legislation as to attorneys see Hen. Stat. vol. 1, p. 275, ch. 61; p. 302, ch. 7; p. 313, ch. 8; p. 330, ch. 10; p. 349, ch. 16; p. 419, ch. 6; p. 482, ch. 112; p. 495, 6; p. 523, ch. 17; vol. 2, p. 81; p. 478, ch. 6; p. 498, ch. 6. There are provisions in some of these statutes not a little curious.

county or corporation for which such circuit court is holden, such court shall order the attorney to be summoned to shew cause why an information should not be filed against him; and if such information be ordered and the attorney be found guilty, the court may suspend his license for a time, or annul it. The court of appeals, special court of appeals and the general court, shall have the like power over attorneys practising in those courts respectively; and in case an information should be ordered in such case, may cause a jury to be empaneled to try the same.

1 R. C. p. 268,
§ 6.

§ 7. Nothing in the preceding section shall affect the right of any court to require from an attorney therein security for his good behaviour, or to fine him for a contempt of the court.

1 R. C. p. 270,
§ 13.
1845-6, p. 61, ch.
81.

§ 8. If any justice, clerk, sheriff or sergeant, or any deputy of either, or any person interested in the profits of any such office, shall act as attorney at law in any case in any court of which such justice, clerk, sheriff or sergeant is a member or officer, he shall forfeit thirty dollars.

1 R. C. p. 269, § 8.

§ 9. Every attorney at law shall be liable to his client for any damages sustained by him by the neglect of his duty as such attorney.

Id. § 9.
2 Call 200.

§ 10. If any attorney receive money for his client and fail to pay the same on demand, it may be recovered from him by warrant, or by suit or motion according to the amount, and damages in lieu of interest, not exceeding fifteen *per centum* per annum until paid, may be awarded against him.

1 R. C. p. 271,
§ 14, 15.
1839-40, p. 44, ch.
50, § 2.

§ 11. An attorney shall be entitled as a fee to the amount which the clerk is authorized to tax in the bill of costs, in any suit, or for any service as such attorney. But any contract made with an attorney for other or higher fees shall be valid, and may be enforced in like manner with any other contract.

CHAPTER CLXV.

OF THE ATTORNEY-GENERAL AND OTHER ATTORNEYS FOR THE COMMONWEALTH.

SEC.

1. } Duties of the attorney-general;
2. } and where his office is kept.
3. }
4. }
5. His fees.
6. Attorneys appointed to prosecute for commonwealth in circuit, county and corporation courts.

SEC.

7. Their compensation.
8. Information to be given to them of, and proceedings instituted by them for, violations of penal laws; their power to have witnesses summoned.

Of the attorney-general.

1835-36, p. 33, ch.
43, § 2.

§ 1. The attorney-general shall give his opinion and advice

in writing, when required to do so by the governor, or by any of the public boards and officers at the seat of government.

§ 2. He shall appear as counsel for the state in all cases in Id. § 1, 2. which the commonwealth is interested, depending in the court of appeals, either in the eastern or western district thereof, or in the general court, or in the circuit court of law or chancery for the county of *Henrico*.

§ 3. He shall annually, on or before the first day of November, deliver to the governor a report of the state and condition of the several causes in which the commonwealth is a party, pending in the said courts. Id. § 4.
1846-7, p. 241, No. 19.
1847-8, p. 354.

§ 4. The governor shall assign to the attorney-general a room in the state court-house, for his office. 1832-3, p. 17, ch. 16.
1846-7, p. 15, ch. 14, § 1.

§ 5. On the final determination of any cause in any court mentioned in the second section, in which the attorney-general appeared for the state, the clerk thereof shall certify to the first auditor the fee of the attorney-general, which shall be paid out of the public treasury. His fees in a circuit court, on an appeal from a decision of the auditor, shall be the same as are taxable in the general court. 1835-6, p. 33, ch. 43, § 3.

Attorneys for the commonwealth.

§ 6. Each circuit, county and corporation court shall appoint an attorney to prosecute for the commonwealth in such court. 1 R. C. p. 241, § 66; p. 272, § 18.
6 Leigh 639.

§ 7. Such attorney, in any county or corporation court, shall be allowed by the court such sum as it deems reasonable, for public services, (for which no other fee or reward is allowed by law,) which shall be chargeable to such county or corporation, and in a circuit court, shall be allowed by it, where the attorney has no annual salary, such sum as it deems reasonable, not exceeding in one year one hundred and fifty dollars in the circuit courts of the county and city of *Norfolk*, and one hundred dollars in any other circuit court. 1 R. C. p. 241, § 66; p. 272, § 18.
1822-3, p. 19, ch. 19, § 3.
1830-31, p. 49, ch. 11, § 27.
1843-4, p. 51, ch. 66.

§ 8. Every commissioner of the revenue, sheriff, constable or other officer, shall give information of the violation of any penal law to such attorney, who shall forthwith institute and prosecute all necessary and proper proceedings in such case, whether in the name of the commonwealth or of a county or corporation, or of the overseers of the poor; and may in such case issue or cause to be issued a summons for any witness he may deem material to give evidence before the court or grand jury. 2 R. C. p. 279, ch. 239, § 49.
1838, p. 82, § 5.

CHAPTER CLXVI.

REPORTS, OF THE DECISIONS OF THE COURT OF APPEALS
AND GENERAL COURT.*

- 1819-20, p. 16, ch. 17, § 1. § 1. The reporter appointed by the court of appeals shall
1820-21, p. 31, ch. 30. prepare and annually, before the tenth day of July, deliver to
1827-8, p. 21, ch. 25, § 5. such printer, as the secretary of the commonwealth may direct,
1828-9, p. 11, ch. 9. manuscript reports of such of the decisions made during the
1841-2, p. 51, ch. 88, § 1. year ending the first day of April, by the court of appeals
1842-3, p. 29, ch. 39, § 1. and general court, as such courts respectively shall think
ought to be published, with an abstract of the points decided
in each case, and proper indexes and references.
- 1841-2, p. 51, ch. 88, § 2. § 2. He shall examine and correct the proof-sheets thereof
as they shall be furnished him by the printer.
- 1847-8, p. 52, ch. 68, § 11. § 3. He shall not be required to report the decisions of any
special court of appeals, but such court may allow any person
approved by it, to report its decisions free of charge to the
state.
- 1841-2, p. 51, ch. 88, § 1. § 4. The reporter first above named shall hold his office at
the pleasure of the court of appeals, by which a vacancy in
the office may be filled from time to time.

Title 51.

PROCEEDINGS IN CIVIL CASES.

- CHAP. 167. Of notices and motions.
168. Of changing a person's name; suing in the names of persons who are dead; and the joinder of tenants in common.
169. Of the county or corporation in which proceedings are commenced.
170. Of process, and the order of publication.
171. Of the rules; pleadings generally; and judgments in the office.
172. Of payment and set-off.
173. Of the death or change of parties, and the discontinuance of causes not prosecuted.
174. Of the removal of causes pending in one court, to another.
175. Of the appointment of commissioners in chancery; the reference of accounts to them; and the proceedings thereupon.
176. Of evidence.
177. Of the court docket; enquiry of damages; trial by jury; and judgments and decrees of the court for money.
178. Of decrees of sale; orders for executing deeds or appointing trustees; and the reservation for infants.

* For an account of the legislation concerning the reports, and of the reporters prior and subsequent to such legislation, see the preface to vol. 1 of *Robinson's Reports*. How the reports are printed, bound and distributed, see ante, p. 111, ch. 19, § 3, 4.

179. Of injunctions; appointment of receivers; and bills of review.
 180. Of the loss of a record or paper in a cause.
 181. Of errors insufficient in an appellate court.
 182. Of appeals and writs of error and *supersedeas*.
 183. General provisions.

CHAPTER CLXVII.

OF NOTICES AND MOTIONS.*

SEC.

1. } Mode of serving a notice; and evi-
2. } dence of service.
3. Ten days' notice generally re-
4. } quired of motion for judgment.
5. } Remedy by motion, on certain
6. } bonds taken or given by officers.
7. } Remedy by motion, after sixty
8. } days' notice, on contracts gene-
9. } rally; when notice must be re-

SEC.

1. } turned to clerk's office; provi-
2. } sion to prevent discontinuance
3. } of motion.
4. } Against what part of those liable
5. } judgment may be given, on mo-
6. } tion.
7. } When, on a motion, there may be
8. } trial by jury.

§ 1. A notice, no particular mode of serving which is pre-
 scribed, may be served by delivering a copy thereof in writing
 to the party in person; or, if he be not found at his usual
 place of abode, by delivering such copy and giving infor-
 mation of its purport to his wife or any white person found
 there, who is a member of his family, and above the age of
 sixteen years; or, if neither he nor his wife, nor any such
 white person, be found there, by leaving such copy posted at
 the front door of said place of abode. Any sheriff or ser-
 geant, thereto required, shall serve a notice within his baili-
 wick, and make return of the manner and time of service;
 for a failure so to do, he shall forfeit twenty dollars. Such
 return, or a similar return by any other person who verifies it
 by affidavit, shall be evidence of the manner and time of ser-
 vice.

1 R. C. p. 506,
 § 66, 67.
 4 Munf. 398.

§ 2. Any such notice to a person not residing in *Virginia*,
 may be served by the publication thereof once a week for
 four successive weeks, in a newspaper printed in this state.

1 R. C. p. 521,
 § 21.
 1822-3, p. 22, ch.
 37, § 3.
 1830-31, p. 101,
 ch. 32, § 2.

§ 3. In any case wherein there may be judgment or decree
 for money on motion, such motion shall be after ten days'
 notice, unless some other time be specified in the section
 giving such motion.

§ 4. The court to which, or in, or to whose clerk or office,
 any bond taken by an officer, or given by any sheriff, ser-
 geant or constable, is required to be returned, filed or recorded,
 may, on motion of any person, give judgment for so much
 money as he is entitled, by virtue of such bond, to recover by
 action.

See ante, p. 253,
 ch. 49, § 40; and
 post. ch. 150, § 12,
 13.

* As to the indulgence with which notices are viewed, see 1 Call 44, 385; 5
 Call 528; 4 Munf. 398. In respect to the power of the court to require a state-
 ment to be filed of the particulars of the claim, or of the ground of defence, see
 post. ch. 176, § 42.

1 H. and M. 4.
7 Leigh 221.

§ 5. Any person entitled to recover money by action on any contract, may, on motion before any court which would have jurisdiction in an action, otherwise than under the second section of the one hundred and sixty-ninth chapter, obtain judgment for such money after sixty days' notice, which notice shall be returned to the clerk's office of such court forty days before the motion is heard. A motion under this section, which is docketed under the first section of chapter one hundred and seventy-seven, shall not be discontinued by reason of no order of continuance being entered in it from one day to another, or from term to term.

2 Call 368.
3 Call 521.
4 Call 130.
5 Call 435.

§ 6. A person entitled to obtain judgment for money on motion, may, as to any, or the personal representatives of any, person liable for such money, move severally against each, or jointly against all, or jointly against any intermediate number; and when notice of his motion is not served on all of those to whom it is directed, judgment may nevertheless be given against so many of those liable as shall appear to have been served with the notice. Such motions may be made from time to time until there is judgment against every person liable, or his personal representative.

1 Wash. 72, 3.
1 Rand. 1.
3 Rand. 554.

§ 7. On a motion when an issue of fact is joined, and either party desire it, or when in the opinion of the court it is proper, a jury shall be empaneled, unless the case be one in which the recovery is limited to an amount not greater than twenty dollars, exclusive of interest.

CHAPTER CLXVIII.

OF CHANGING A PERSON'S NAME; SUING IN THE NAMES OF PERSONS WHO ARE DEAD; AND THE JOINDER OF TENANTS IN COMMON.

SEC.

1. Changing a person's name.
2. Joinder of tenants in common.

SEC.

3. Suing in the names of persons who are dead.

1839, p. 45, ch. 71.

§ 1. Any person desiring a change of his own name, or that of his child or ward, may apply therefor to the circuit court of the county or corporation in which he resides, and the court in its discretion may make an order for that purpose. Thenceforth the new name shall be in the place of the former, as if the change had been made by act of assembly.

1823-4, p. 27, ch. 24, § 1.

§ 2. Tenants in common may join or be joined as plaintiffs or defendants.

1838, p. 72, ch. 93.

§ 3. Upon any official bond, executed before this act is in force, suit may be maintained, (for the benefit of any person injured by the breach of the condition thereof,) in the names

of the judges, justices or other person to whom such bond is payable, whether any of the obligees be alive or not; and although any justice to whom the bond is made payable, was not sitting in the court at the time of its execution, or although any other justice was sitting at that time.

CHAPTER CLXIX.

OF THE COUNTY OR CORPORATION IN WHICH PROCEEDINGS ARE COMMENCED.*

SEC.

1. } As to actions at law and suits in
2. } equity.
3. }

SEC.

4. As to writs of *mandamus*, prohibition and *certiorari*.

§ 1. Any action at law or suit in equity, except where it is otherwise specially provided, may be brought in any county or corporation: 1 R. C. p. 202, § 33; p. 498, § 41.

First, wherein any of the defendants may reside; or, 1830-31, p. 55, ch. 11, § 38.

Secondly, if a corporation be a defendant, *wherein* its principal office is, or *wherein* its mayor, rector, president or other chief officer resides; or, 1 R. C. p. 472, ch. 122, 1836-7, p. 44, ch. 68.

Thirdly, if it be to recover land or subject it to a debt, or be against a debtor who resides without, but has estate or debts due him within this state, *wherein* such land, estate or debts, or any part thereof, may be; or, 1 R. C. p. 257, § 62. See ante, p. 600, ch. 151, § 1.

Fourthly, if it be on behalf of the commonwealth, in the name of the attorney-general, or otherwise, *wherein* the seat of government is; or, 1 R. C. p. 201, ch. 66, § 28.

Fifthly, if a judge of a circuit court be interested in a case which, but for such interest, would be proper for the jurisdiction of his court, the action or suit may be brought in any county or corporation in an adjoining circuit. 1 R. C. p. 199, § 19; p. 239, § 53.

§ 2. An action may be brought in any county or corporation wherein the cause of action, or any part thereof, arose, although none of the defendants may reside therein. 1 R. C. p. 498, § 41.

§ 3. Any action or suit mentioned in the two preceding sections, may be in a circuit, county or corporation court of any county or corporation wherein it is allowed thereby to be brought. Id.

§ 4. Jurisdiction of writs of *mandamus*, prohibition and *certiorari*, (except such as may be issued from the general court or court of appeals,) shall be in the circuit court of the county or corporation in which the record or proceeding is to which the writ relates. Any such writ may be awarded either by the circuit court or (in vacation) by the judge thereof. 1 R. C. p. 202, § 30; p. 237, § 45. 1830-31, p. 48, 55, 56, ch. 12, § 24, 36, 39.

* See 4 Munf. 457; 5 Munf. 431; Gilm. 159; 10 Leigh 661; 2 Grat. 202.

CHAPTER CLXX.

OF PROCESS AND THE ORDER OF PUBLICATION.

SEC.	SEC.
1. Forms of writs.	7. How to serve process against, or notice to a corporation.
2. How process is directed and returnable; and when it may be executed.	8. How to serve process or notice in a case against a common carrier, (other than a corporation.)
3. When new process may issue; if officer had executed and not returned former process, what is to be done.	9. No judgment on returns of <i>nihil</i> .
4. Officer's duty after every rules, to get from clerk's office process, orders and decrees.	10. On what affidavit order of publication is entered; it may be in court or at rules.
5. Process to commence suit, a summons; how issued; not altered afterwards.	11. What order states; how it is published and posted.
6. How a summons or <i>scire facias</i> is served; copy made out to be delivered to defendant; what time must elapse before there is final judgment by default.	12. Within what time case may be tried or heard after publication; what judgment, decree or order is to be entered.
	13. Within what time case may be reheard and injustice corrected.

Of process generally.

1 R. R. p. 498,
§ 39.

§ 1. Until the court of appeals shall alter the forms of writs, the same may be as heretofore used, except so far as is otherwise provided.

1 R. C. p. 102,
§ 32, 34; p. 194,
§ 17; p. 223, § 14;
p. 498, § 39; p.
505, § 65; p. 507,
§ 70; p. 512,
§ 107.
1830-31, p. 66, ch.
11, § 71.
1846-7, p. 66, ch.
75, § 1.
1848-9, p. 52, ch.
98, § 2.

§ 2. Process from any court, whether original, *mesne* or final, may be directed to the sheriff of any county or the sergeant of any corporation, except that process against a defendant to answer in any action brought under the second section of chapter one hundred and sixty-nine shall not be directed to an officer of any other county or corporation than that wherein the action is brought. Any process may be executed on or before the return day thereof. If it appear to be duly served and good in other respects, it shall be deemed valid, although not directed to any officer, or if directed to an officer, though executed by any other to whom it might lawfully have been directed. It shall be returnable within ninety days after its date, to the court on the first day of a term, or in the clerk's office to the first Monday in a month, or to some rule day, except that a summons for a witness shall be returnable on whatever day his attendance is desired, and process awarded in court may be returnable as the court shall direct.

1 Call 133.
2 Rand. 1.
2 Leigh 545.
4 Leigh 359.

1 R. C. p. 194,
§ 17; p. 202, § 34;
p. 214, § 74; p.
504, § 61, 62, 63;
p. 506, 7, § 70.
1845-6, p. 59, ch.
74, § 2.

§ 3. If at the return day of any process, it be not returned executed, an *alias*, or other proper process may be issued, without waiting (where the first process is returnable to a term) for the subsequent process to be awarded at rules. And where, for want of a return of the first process against a defendant, any subsequent process is issued, if the former was executed, the officer shall not execute the latter; but shall return the former if it be in his possession, and if he has it not, shall

return the latter with an endorsement of the execution of the former, and the proceedings thereupon shall be as if the first had been duly returned.

§ 4. Every officer who attends a court shall, within five days after the end of any rules, go to the clerk's office and receive all process, orders and decrees to be executed by him, and give receipts therefor. For any failure so to do, he shall forfeit fifty dollars.

1 R. C. p. 210, § 66.

Process requiring a defendant to appear.

§ 5. The process to commence a suit shall be a writ commanding the officer to whom it is directed, to summon the defendant to answer the bill or action.* It shall be issued on the order of the plaintiff, his attorney or agent, and shall not, after it is issued, be altered, nor any blank therein filled up, except by the clerk.

1 R. C. p. 472, ch. 122, § 1, 3; p. 506, § 68.
1825-6, p. 15, ch. 15, § 1.
1836-7, p. 44, ch. 6, § 1, 3.
1842-3, p. 51, ch. 74, § 6.
2 Will. iv. ch. 39.

§ 6. Any summons or *scire facias* against any person may be served as a notice is served under the first section of chapter one hundred and sixty-seven; to which end the clerk issuing such process, unless otherwise directed, shall deliver or transmit therewith as many copies thereof as there are persons named therein, on whom it is to be served. No judgment by default on a *scire facias* or summons shall be valid, if it become final within one month after the service of such process.

1 R. C. p. 506, § 66, 67, 68; p. 214, § 83; p. 255, § 42.
1823-4, p. 27, ch. 23.
1825-6, p. 15, ch. 15, § 1.
2 Will. iv. ch. 39, § 4.
3 and 4 Will. iv. ch. 67.

§ 7. It shall be sufficient to serve any process against, or notice to a corporation, on its mayor, rector, president or other chief officer, or in his absence from the county or corporation in which he resides, or in which is the principal office of the corporation, against or to which the process or notice is, if it be a city or town, on the president of the council or board of trustees, or in his absence, on the recorder or any alderman or trustee; and if it be not a city or town, on the cashier or

1 R. C. p. 473, ch. 122, § 2.
1836-7, p. 44, ch. 68, § 2.
1838, p. 84, ch. 108, § 7.

* In England the statute of 2 Will. iv. ch. 39, made a writ of summons the ordinary process for the commencement of personal actions, when it was not intended to hold the defendant to bail; and the statute of 1 and 2 Vict. ch. 110, § 1, abolished arrest on *mesne* process from the superior courts, in all actions except in certain cases specially provided for. See the act cited in *Brown v. McMillan*, 7 Meeson & Welsby 196. In this Code there are no such exceptions. The provisions in 1 R. C. p. 202, § 30; p. 203, § 38; p. 217, § 108, 111; p. 258, 9, § 67, 68, 69, 71, in relation to writs of *ne-exeat*, or in 1 R. C. p. 499, § 42, to p. 504, § 59; 1825-6, p. 22, ch. 22, § 1 to 9, and 1826-7, p. 26, ch. 28, § 1, 2, in relation to bail at law, are retained in the Code no farther than is done by § 5 of ch. 183, and § 1 of ch. 188. This is a consequence of the measures for the abolition of imprisonment for debt. The revisors having come to the conclusion that no benefit results to a creditor from taking a debtor under a writ of *capias ad satisfaciendum*, or from his discharge under the insolvent laws, which would not be sufficiently attained under the chapters prepared by them in relation to judgments and executions, did not deem it consistent, (if after judgment the defendant was not to be taken under a *ca. sa.*) to require from the defendant bail, that in case judgment was rendered against him, he would render his body to prison; for it was not his body that would be wanted when judgment was rendered, but his estate. Some measure seemed proper if he was removing his property out of the state; and provision was made for that case in chapter 151 of attachments, especially by the second section thereof, *ante*, p. 601. See further note to § 2 of ch. 188.

2 R. C. p. 117, ch.
211, § 1, 2.
1831-2, p. 68, ch.
75.
1848-9, p. 52, ch.
98, § 1.

6 Leigh 399.
11 Leigh 372.
12 Leigh 84.

treasurer; and if there be none such, or he be absent, on a member of the board of directors, trustees or visitors. If the case be against a bank of circulation, and be in a county or corporation wherein the bank has a branch, service on the president or cashier of such branch bank shall be sufficient; and if the case be against some other corporation than a bank, and there be not in the county or corporation wherein it is commenced, any other person on whom there can be service as aforesaid, service on an agent of the corporation against which the case is, and publication of a copy of the process or notice as an order is published under the eleventh section of this chapter, shall together be sufficient. Service on any person under this section, shall be in the county or corporation in which he resides; and the return shall shew this, and state on whom and when the service was, otherwise the service shall not be valid.

§ 8. In a case against any common carrier (other than a corporation) for any liability as such, it shall be sufficient to serve any process against or notice to the carrier, on any agent, or the driver, captain or conductor of any vehicle, of such carrier, in the county or corporation wherein the case is commenced, and to publish a copy of the process or notice as an order is published under the eleventh section of this chapter.

Returns of nihil; and order of publication.

1 R. C. p. 505,
§ 65.
5 Munf. 407.

§ 9. No judgment shall be rendered on a *scire facias*, or in any other case, on returns of *nihil*.

1 R. C. p. 202,
§ 36; p. 205, § 46;
p. 474, § 1, 2; p.
476, § 5; p. 505,
§ 64.
1830-31, p. 99, ch.
31; p. 101, ch.
32, § 2.
1839-40, p. 47, ch.
53, § 4.
1848-9, p. 52, ch.
98, § 2.

§ 10. On affidavit that a defendant is not a resident of this state, or that diligence has been used by or on behalf of the plaintiff to ascertain in what county or corporation he is, without effect, or that process, directed to the officer of the county or corporation in which he resides, or is, has been twice delivered to such officer more than ten days before the return day, and been returned without being executed, an order of publication may be entered against such defendant. And in any suit in equity, where the bill states that the names of any persons interested in the subject to be divided or disposed of, are unknown, and makes such persons defendants by the general description of parties unknown, on affidavit of the fact that the said names are unknown, an order of publication may be entered against such unknown parties. Any order under this section may be entered either in court or at the rules.

Id.
4 Munf. 366.

§ 11. Every order of publication shall state briefly the object of the suit, and require the defendants against whom it is entered, or the unknown parties, to appear within one month after due publication thereof, and do what is necessary to protect their interests. It shall be published once a week for four successive weeks, in such newspaper as the court

may prescribe, or if none be so prescribed, as the clerk may direct, and shall be posted at the front door of the courthouse of the county or corporation wherein the court is held, on the first day of the next county or corporation court after it is entered.

§ 12. When such order shall have been so posted and published, if the defendants against whom it is entered, or the unknown parties shall not appear within one month after such publication is completed, the case may be tried or heard as to them. Upon any trial or hearing under this section such judgment, decree or order shall be entered as may appear just. ^{4 Munf 366.}

§ 13. Any unknown party or other defendant who was not served with process and did not appear in the case before the date of such judgment, decree or order, or the representative of any such, may, within five years from that date, if he be not served with a copy of such judgment, decree or order, more than a year before the end of the said five years, and if he be so served, then within one year from the time of such service, petition to have the case re-heard and may plead or answer and have any injustice in the proceedings corrected. ^{Id. 3 Grat. 98.}

CHAPTER CLXXI.

OF THE RULES, PLEADINGS GENERALLY, AND JUDGMENTS IN THE OFFICE.

SEC.

1. When rules are held, and how long continued.
2. Docket in which rules are entered.
3. What is done when no clerk to take a rule.
4. Rules may be to declare, plead, or for other proceedings; given from month to month.
5. When defendant may appear and give a rule to file a declaration or bill; plaintiff failing to prosecute, non-suited.
6. Although defendant do not appear, suit to be dismissed after three months, if declaration or bill be not filed.
7. When fact of defendant's non-residence is to be returned, and suit abated.
8. As to allegations in pleadings; when place of contract need not be set forth; if set forth, how.
9. As to averment of jurisdiction; and *profert*.
10. What allegations, not traversable, may be omitted.
11. Declaration good, if it set forth sufficient matter of substance.

SEC.

12. In trespass, what general averments may be omitted.
13. When account must be filed with declaration, in *assumpsit*.
14. How and when plaintiff may amend declaration, or file amended or supplemental bill, or bill of revivor; proceedings thereon.
15. Proceedings when cross bill is filed.
16. As to infant or insane defendant; power to appoint guardian *ad litem*, and make him act; as to his costs and charges.
17. Plea in abatement for misnomer not allowed; power to amend, by inserting right name.
18. What defects can be taken advantage of, only by plea in abatement.
19. How and when exception must be taken to the jurisdiction.
20. What must be stated in plea in abatement for *non-joinder*.
21. When issue on plea in abatement for *non-joinder*, will be found against defendant.

SEC.		SEC.	
22.	After such plea, how declaration may be amended; if only part of defendants be liable, how judgment is to be entered.		abatement, or plea of <i>non est factum</i> .
23.	Defendant may plead several matters.	38.	Or where denial of hand-writing.
24.	Unnecessary to use allegation of " <i>actionem non</i> ," or " <i>precludi non</i> ," or prayer of judgment.	39.	Or denial of partnership.
25.	Protestation may be omitted.	40.	Pleadings may be sworn to before clerk; affidavit of belief sufficient.
26.	How traverses shall conclude; as to pleading over to the inducement.	41. }	Judgment or decree by confession;
27.	When plaintiff may proceed without joinder in demurrer or <i>similiter</i> .	42. }	or in the office by default.
28.	How plea shall commence.	43.	In what cases enquiry of damages unnecessary.
29.	After one plea, how another may commence.	44. }	How judgment in the office may be set aside or become final; if
30.	Form of demurrer or joinder in demurrer.	45. }	issue joined, when it may be tried; if final judgment, its effect as a lien.
31.	What defects not to be regarded on demurrers.	46. }	After bill taken for confessed, proceeding by attachment, or to
32. }	As to demurrers and pleas, in equity.	47. }	have answers on interrogatories.
33. }		48.	When a suit in equity may be set for hearing.
34. }	When answer may be filed; not to delay the cause; proceedings on exceptions to answer.	49.	When plaintiff may proceed to judgment against part of the defendants.
36. }		50.	When suit in equity may be heard as to part of defendants; how plaintiff compelled to mature his cause, or have it dismissed.
37.	Affidavit necessary to plea in	51.	Control of court over proceedings in office.

General provisions as to the rules.

1 R. C. p. 506,
§ 69.
1825-6, p. 17,
§ 12.
1845-6, p. 59, ch.
74, § 1.
11 Leigh 433.

§ 1. In the clerk's office of the general court, and of every circuit, county and corporation court, rules shall be held on the first Monday in every month, except that when a term of a circuit court, or a quarterly term of a county or corporation court, happens to commence on the first Monday in a month, or either of the two following days, or on the preceding Thursday, Friday or Saturday, the rules, which otherwise would have been held for the said month on the first Monday, shall be held on the last Monday in the next preceding month. The rules may continue three days.

1 R. C. p. 507,
§ 74.
1830-31, p. 47, ch.
11, § 18.

§ 2. There shall be a docket of the cases at rules, wherein the rules shall be entered; and the books in which rules and orders are entered, in chancery cases, shall be separate from those in which rules and orders are entered in other cases.

1 R. C. p. 204,
§ 42; p. 223, § 18;
p. 507, § 75.
1830-31, p. 70,
§ 85.

§ 3. When there is no clerk to take a rule in a case, it shall stand continued until the next rule day after there is a clerk.

1 R. C. p. 215,
§ 94, 95; p. 256,
§ 53; p. 507, § 74.

§ 4. The rules may be to declare, plead, reply, rejoin, or for other proceedings; they shall be given from month to month.

When the suit will abate or be dismissed.

1 R. C. p. 507,
§ 72; p. 254, § 36,
37; p. 257, § 57;
p. 213, § 77, 78;
p. 215, § 99; p.
214, § 88.

§ 5. A defendant may appear at the rule day at which the process against him is returnable, or if it be returnable in term, at the first rule day after the return day, and if the de-

claration or bill be not then filed, may give a rule for the plaintiff to file the same. If the plaintiff fail to do this at the succeeding rule day, or shall, at any time after the defendant's appearance, fail to prosecute his suit, he shall be non-suited, and pay to the defendant, besides his costs, five dollars. 6 Rand. 675.

§ 6. If three months elapse after the process is returned executed as to any one or more of the defendants, without the declaration or bill being filed, the clerk shall enter the suit dismissed, although none of the defendants may have appeared. 1 R. C. p. 254,
§ 36; p. 213,
§ 77, 78.
1825-6, p. 15, ch.
15, § 1.

§ 7. When a summons to answer an action or bill is against a defendant, whom the officer (receiving it) knows not to reside in his county or corporation, he shall, unless he find him therein before the return day, return him a non-resident; whereupon, if the court from which such process issued have jurisdiction of the case only on the ground of such defendant's residence in such county or corporation, the suit shall abate as to him. 1 R. C. p. 280,
§ 18; p. 504, § 60.
1 Wash. 9.

General rules as to immaterial allegations.

§ 8. It shall not be necessary in any declaration or other pleading to set forth the place in which any contract was made, or act done, unless when, from the nature of the case, the place is material or traversable, and then the allegation may be as to a deed, note or other writing bearing date at any place, that it was made at such place, or as to any other act, according to the fact, without averring or suggesting that it was at or in the county or corporation in which the action is brought, unless it was in fact therein. 6 Munf. 110.
6 Rand. 101.

§ 9. It shall not be necessary in any action to aver that the cause of action arose, or that the matter is within the jurisdiction of the court, or to make *profert* of any deed, letters testamentary or commission of administration; but a defendant may have *oyer* in like manner as if *profert* were made. 1 R. C. p. 211,
§ 103.
1 Wash. 81, 87.
3 Call 554.
4 Call 107.
7 Leigh 93.

§ 10. All allegations which are not traversable, and which the party could not be required to prove, may be omitted unless when they are required for the right understanding of allegations that are material.

Of the declaration.

§ 11. No action shall abate for want of form, where the declaration sets forth sufficient matter of substance for the court to proceed upon the merits of the cause. 1 R. C. p. 511,
§ 100.

§ 12. In actions of trespass, general averments that the defendant committed other wrongs, and that the acts charged were done *with force and arms and against the peace*, may be omitted; and the plaintiff may prove all that he could have done if such averments had been inserted in the declaration. 1 R. C. p. 211,
§ 103.

1 R. C. p. 510,
§ 86.

§ 13. In every action of *assumpsit* the plaintiff shall file with his declaration an account stating distinctly the several items of his claim, unless it be plainly described in the declaration.*

Amended or supplemental bill, bill of revivor and cross bill.

1 R. C. p. 255,
§ 38; p. 213, § 79.
1843-4, p. 54, ch.
69.

§ 14. The plaintiff may of right amend his declaration or bill before the defendant's appearance, and notwithstanding such appearance, a plaintiff in equity may, at any time in the vacation of the court wherein the suit is pending, file in the clerk's office an amended or supplemental bill or bills of revivor; whereupon the same proceedings may be had as if leave to file it had been previously obtained in court, but the court on the motion of a defendant, made at the term to which process to answer the same is returned executed on him, or if it be returnable to rules, at the first term after it is so returned, may dismiss such amended or supplemental bill, or bill of revivor.

1 R. C. p. 214,
§ 87; p. 255, § 45.
4 Call 360.
3 Rand. 117.

§ 15. When a cross bill is filed, the defendants in the first bill shall answer it, before the defendants in the cross bill are compelled to answer that.

Guardian ad litem to infant or insane defendant.

1 R. C. p. 212,
§ 3, 73; p. 495,
§ 32.
2 Call 1.
2 Munf. 129, 342.
4 Munf. 439.
6 Munf. 99.
2 Rand. 174, 409

§ 16. The proceedings in a suit, wherein an infant or insane person is a party, shall not be stayed because of such infancy or insanity, but the court in which the suit is pending, or the clerk at rules, may appoint a guardian *ad litem* to any infant or insane defendant, whether such defendant shall have been served with process or not. The court may compel the person so appointed to act, but he shall not be liable for costs, and shall be allowed his reasonable charges, which the party on whose motion he was appointed shall pay.

Matter of abatement.

3 and 4 Will. iv.
ch. 42, § 11, 12.

§ 17. No plea in abatement for a misnomer shall be allowed in any action, but in a case wherein, but for this section, a misnomer would have been pleadable in abatement, the declaration may, on the defendant's motion, and on affidavit of the right name, be amended by inserting the right name.

1 R. C. p. 511,
§ 101, 103.

§ 18. In other cases, a defendant, on whom the process, summoning him to answer, appears to have been served, shall not take advantage of any defect in the writ or return, or any variance in the writ from the declaration, unless the same be pleaded in abatement.

1 R. C. p. 214,
§ 86; p. 256, § 52.
4 Call 416.

§ 19. Where the declaration or bill shews on its face proper matter for the jurisdiction of the court, no exception for want

* See 4 Rand. 488; 11 Leigh 471; 12 Leigh 378; post. ch. 176, § 42.

of such jurisdiction shall be allowed, unless it be taken by plea in abatement, and the plea shall not be received after the defendant has demurred, pleaded in bar, or answered to the declaration or bill, nor after a rule to plead, or a conditional judgment or decree *nisi*.

3 H. and M. 67.
1 Munf. 284.
2 Munf. 297.
2 Leigh 6.
6 Leigh 530.

§ 20. No plea in abatement, for the non-joinder of any person as a co-defendant, shall be allowed in any action, unless it be stated in the plea that such person is a resident of this state, and unless the place of residence of such person be stated with convenient certainty in an affidavit verifying the plea.

3 and 4 Will. iv.
ch. 42, § 8.

§ 21. If a defendant plead in abatement that any other persons ought to be jointly sued, and at the trial of an issue joined on such plea, it appear that the action could not, by reason of chapter one hundred and forty-three, or chapter one hundred and forty-nine, be maintained against such other persons, or any of them, such issue shall be found against the defendant so pleading.

9 Geo. iv. ch. 14,
§ 2.
2 Rand. 478.

Ante, p. 579, 590,
ch. 143, 149.

§ 22. After such plea in abatement, the plaintiff, without proceeding to trial upon an issue thereon, may amend his declaration, and make the persons named in such plea as joint contractors, defendants in the case with the original defendants, and cause process to be served upon the new defendants; and if it appear by the subsequent pleadings in the action, or at the trial thereof, that all the original defendants are liable, but that one or more of the other persons named in such plea are not liable, the plaintiff shall be entitled to judgment, or to verdict and judgment as the case may be, against the defendants who appear liable; and such as are not liable, shall have judgment and recover costs as against the plaintiff, who shall be allowed the same as costs against the defendants who so pleaded.

3 and 4 Will. iv.
ch. 42, § 8.

General rules as to pleas and subsequent pleadings.

§ 23. The defendant in any action may plead as many several matters, whether of law or fact, as he shall think necessary.*

1 R. C. p. 510,
§ 88.

§ 24. In a plea, replication or subsequent pleading, intended to be pleaded in bar, or in maintenance of the action, it shall not be necessary to use any allegation of "*actionem non*," or "*precludi non*," or to the like effect, or any prayer of judgment.

Rules of Eng.
Judges of 1834.

§ 25. No party shall be prejudiced by omitting a protestation in any pleading.

1a.

§ 26. All special traverses, or traverses with an inducement of affirmative matter, shall conclude to the country. But this regulation shall not preclude the opposite party from pleading over to the inducement when the traverse is immaterial.

1a.

* See 5 Call 462; 6 Call 71; 4 H. and M. 277; 2 Munf. 88; 3 Rand. 56, 448; 7 Leigh 402; 8 Leigh 532.

Rules of English
Judges of 1834.
Gilm. 228, 338.

§ 27. When the plaintiff takes issue on the defendant's pleading, or traverses the same or demurs, so that the defendant is not let in to allege any new matter, the plaintiff may, without giving a rule to rejoin, proceed as if there were a *similiter* or joinder in demurrer.

Particularly as to pleas and demurrers.

Rules of Eng.
Judges of 1834.

§ 28. No formal defence shall be required in a plea; it shall commence as follows: "*The defendant says that.*"

Id.

§ 29. It shall not be necessary to state in a second or other plea, that it is pleaded by leave of the court, or according to the form of the statute, or to that effect.

Id.

§ 30. The form of a demurrer or joinder in demurrer shall be: "*The defendant (or plaintiff) says that the declaration (or plea, &c.) is not (or is) sufficient in law.*"

1 R. C. p. 511,
§ 101, 103.
2 H. and M. 308.
5 Leigh 268.
6 Leigh 47.
7 Leigh 68, 175,
604.
2 Va. Cas. 501.

§ 31. On a demurrer (unless it be to a plea in abatement) the court shall not regard any defect or imperfection in the declaration or pleadings, whether it has been heretofore deemed misleading or insufficient pleading or not, unless there be omitted something so essential to the action or defence that judgment, according to law and the very right of the cause, cannot be given. No demurrer shall be sustained, because of the omission in any pleading of the words, "this he is ready to verify," or, "this he is ready to verify by the record," or, "as appears by the record;" but the opposite party may be excused from replying, demurring, or otherwise answering to any pleading which ought to have, but has not, such words therein, until they be inserted.

1 Wash. 313.

1 R. C. p. 256,
§ 55 to 59; p. 215,
§ 97, 98, 100, 101.
6 Munf. 398.
1 Grat. 108.

§ 32. A plaintiff in equity may have any plea or demurrer set down to be argued. If the same be overruled, no other plea or demurrer shall afterwards be received, but there shall be a rule upon the defendant to answer the bill.

1 R. C. p. 215,
§ 97; p. 256, § 55.
1 Call 382.

§ 33. A plaintiff in equity may take issue upon a plea, and have such issue tried by a jury.* If the plea be found false, he shall have the same advantages as if it had been so found by verdict at law.

Answers and exceptions thereto.

1 R. C. p. 214,
§ 84; p. 255, § 43.
1825-6, p. 15, ch.
15, § 1.

§ 34. At any time before final decree a defendant may be allowed to file his answer, but a cause shall not be sent to the rules or continued, because an answer is filed in it, unless good cause be shewn therefor.

1 R. C. p. 214,
§ 88, 89; p. 255, 6,
§ 46, 7.

§ 35. When the plaintiff files exceptions to an answer, they shall be set down to be argued.

4 Rand. 250, 454.

* Trial by jury provided in such case by the 97th section of the act in 1 R. C. of 1819, p. 215, which section is an exact copy of the 20th section of the act of 1777, establishing the high court of chancery. 9 Hen. Stat. p. 393, § 29. In the revised act of 1792, after the words *take issue upon it*, followed these words: "*and proceed to proofs; and if such plea shall be adjudged false, the complainant shall have,*" &c. 13 Hen. Stat. p. 464, § 59. See post. note to § 4 of ch. 177.

§ 36. When exceptions to an answer have been sustained, if the defendant put in a second answer, which is adjudged insufficient, he may be examined upon interrogatories and committed until he answers them. ^{1 R. C. p. 215, § 92; p. 256, § 49.}

Of pleadings which are to be verified.

§ 37. No plea in abatement or plea of *non est factum* shall be received, unless it be verified by oath.* ^{1 R. C. p. 496, § 33.}

§ 38. Where a declaration or other pleading alleges that any person made, endorsed, assigned or accepted any writing, no proof of the hand-writing of such person shall be required, unless the fact be denied by an affidavit with the plea which puts it in issue. ^{1827-8, p. 24, ch. 31. 3 Grat. 191, 442.}

§ 39. Where plaintiffs or defendants sue or are sued as partners, and their names are set forth in the declaration or bill, it shall not be necessary to prove the fact of the partnership, unless with the pleading, which puts the matter in issue, there be an affidavit denying such partnership. ^{1839, p. 43, ch. 66, § 4. 3 Grat 442.}

§ 40. Any bill, answer or other pleading to be filed in any court, may be sworn to before the clerk thereof. And where an affidavit is required in support of any pleading, it shall be sufficient if the affiant swear that he believes it to be true. ^{1 R. C. p. 214, § 84; p. 255, § 44.}

Judgment or decree by confession.

§ 41. In any suit a defendant may confess a judgment or decree in the clerk's office, for so much principal and interest as the plaintiff may be willing to accept a judgment or decree for. The same shall be entered of record by the clerk in the order or minute book, and be as final and as valid as if entered in court on the day of such confession, except merely that the court shall have such control over it as is given by the last section of this chapter. ^{1 R. C. p. 585. 1839-40, p. 46, ch. 53, § 1, 2. 1842-3, p. 50, ch. 74, § 1, 2, 3, 4.}

Judgment or decree in the office, by default.

§ 42. If a defendant who appears fail to plead, answer or demur to the declaration or bill, a rule may be given him to plead. If he fail to appear at the rule day at which the process against him is returned executed, or, when it is returnable to a term, at the first rule day after it is so returned, the plaintiff, if he has filed his declaration or bill, may have a conditional judgment or decree *nisi* as to such defendant. No service of such decree *nisi* or conditional judgment shall be necessary. But at the next rule day after the same is entered, if the defendant continue in default, or at the expiration of any rule upon him with which he fails to comply, if the case be in equity, the bill shall be entered as taken for confessed as to him, and if it be at law, judgment shall be entered against ^{1 R. C. p. 214, § 82; p. 255, § 43; p. 507, § 73. 1839-40, p. 47, ch. 53, § 4.}

* See 6 Munf. 462; 4 Rand. 448; 6 Rand. 86; 8 Leigh 722; 12 Leigh 479.

him, with an order for the damages to be enquired into, when such enquiry is proper.

1 R. C. p. 508,
§ 79.

6 Munf. 454.
Gilm. 191.
4 Rand. 152.
7 Leigh 175.

§ 43. There need be no such enquiry in an action of debt upon any bond or other writing for the payment of money, or against the drawer or endorsers of a bill of exchange or negotiable note, or in an action of debt or *scire facias* upon a judgment or recognizance.

How office judgment is set aside or becomes final; its effect.

1 R. C. p. 508,
§ 79.

1823-4, p. 69, ch.
46, § 2.
1835-6, p. 36, ch.
50, § 3, 10.

1 Munf. 56.
2 Munf. 334.
3 Munf. 119.
4 Munf. 76.
1 Rand. 460.
2 Va. Cas. 201.

See ante, p. 582,
ch. 144, § 11.

§ 44. Every judgment entered in the office in a case wherein there is no order for an enquiry of damages, and every nonsuit or dismissal entered therein, shall, if not previously set aside, become a final judgment, if the case be in the general or a circuit court, of the last day of the next term, or the fifteenth day thereof, (whichever shall happen first,) and if it be in a county or corporation court, of the last day of the next quarterly term, and have the same effect by way of lien or otherwise as a judgment rendered in the court at such term. Every such judgment for any plaintiff shall be for the principal sum due, with interest thereon, from the time it became payable (or commenced bearing interest) till payment, unless it be in such action as is mentioned in the eleventh section of chapter one hundred and forty-four, in which case it shall be according to that section.

1 R. C. p. 507, 8,
§ 77, 78.

3 Call. 225.
1 Rob. 591.

§ 45. If a defendant, against whom judgment is entered in the office, shall, before it becomes final, appear and plead to issue, it shall be set aside, unless an order for enquiry of damages has been executed; in which case it shall not be set aside without good cause. Any such issue may be tried at the same term, unless the defendant shew good cause for a continuance.

Proceeding by attachment after bill taken for confessed.

1 R. C. p. 213,
§ 80, 81, 82; p.
255, § 39 to 43;
p. 215, § 96; p.
256, § 54.
1825-6, p. 15, ch.
15, § 1.

§ 46. Although a bill be taken for confessed as to any defendant, the plaintiff may have an attachment against him, or an order for him to be brought in to answer interrogatories. No plea or demurrer shall be received after such attachment, unless by order of court, upon motion.

1 R. C. p. 215,
§ 93; p. 256, § 50.
1 H. and M. 310.

§ 47. If a defendant, after process of contempt, put in an answer which is adjudged insufficient, the plaintiff may go on with the subsequent process of contempt as if no answer had been filed.

When a suit in equity may be set for hearing.

1 R. C. p. 216,
§ 103; p. 256,
§ 51.
1822-3, p. 39, ch.
37, § 1.

§ 48. A plaintiff in equity may, at or after the rule day at which the bill is taken for confessed as to any defendant, or at which his answer is filed, have the cause set for hearing as to such defendant; and it may be so set for hearing on the an-

swer, or upon a general replication thereto, as the plaintiff may prefer. If four months elapse after the answer of a defendant is filed, without the case being so set, and without exceptions being filed to his answer, he may have the case set for hearing as to himself.

1825-6, p. 18, ch. 15, § 13.
1846-7, p. 66, ch. 75, § 2.
2 Wash. 191.
2 Rob. 255.

Where a case is ready only as to part of defendants.

§ 49. Where, in an action against two or more defendants, the process is served on part of them, the plaintiff may proceed to judgment as to any so served, and either discontinue it as to the others, or from time to time, as the process is served as to such others, proceed to judgment as to them until judgments be obtained against all.

1839, p. 42, ch. 65.
See post. ch. 178, § 19.
5 Call 98.
1 H. and M. 488.
4 H. and M. 293.
5 Munf. 550.
6 Munf. 105.
2 Rand 446.
2 Leigh 195.
7 Leigh 83.

§ 50. If a suit in equity be set for hearing as to any defendant, it shall be heard as to him, unless his interests be so connected with those of other defendants in the suit, that it would be improper to decide upon their interests separately. And though there be such connection, a defendant as to whom the case has been set for hearing, may have an order upon the plaintiff to use due diligence to mature the cause for hearing as to the other defendants, and, unless it be so matured within such time as the court may deem reasonable, shall be entitled to a hearing or dismissal of it as to him.

1825-6, p. 18, ch. 15, § 13.
4 Munf. 485.
4 Leigh 579.

Control of court over proceedings in the office.

§ 51. The court shall have control over all proceedings in the office, during the preceding vacation. It may reinstate any cause discontinued during such vacation, set aside any of the said proceedings or correct any mistake therein, and make such order concerning the same as may be just.

1 R. C. p. 216.
§ 105; p. 508, § 77.
1825-6, p. 17, § 10.
4 Leigh 317.

CHAPTER CLXXII.

OF PAYMENT AND SET OFF.

SEC.

1. Payment before action brought, may be pleaded.
2. } Defendant may pay into court a sum on account of matter of suit, and plead that plaintiff is not entitled to more; proceedings thereupon.
3. }
4. Payment or set off may be allowed, if described in plea or account; as to setting off, when claim is

SEC.

- against several, debt to one of them.
5. } Special plea of set off; proceedings thereupon; as to effect of this chapter on voluntary bonds.
6. }
7. }
8. When plea or set off goes to part only of demand.
9. Defendant claiming a set off put on the footing of a plaintiff.

§ 1. In any action of debt, the defendant may plead payment of the debt (or of so much as is due by the condition) before action brought.

1 R. C. p. 509, § 84.
4 Rand. 245.

3 and 4 Will iv.
ch. 42, § 21.

1 Call 314.

§ 2. In any personal action, the defendant may pay into court to the clerk a sum of money on account of what is claimed, or by way of compensation or amends, and plead that he is not indebted to the plaintiff, (or that the plaintiff has not sustained damages,) to a greater amount than the said sum.

1 R. C. p. 509,
§ 83.

§ 3. The plaintiff may accept the said sum either in full satisfaction, and then have judgment for his costs, or in part satisfaction, and reply to the plea generally, and if issue thereon be found for the defendant, judgment shall be given for the defendant, and he shall recover his costs.

1 R. C. p. 487,
ch. 127; p. 510,
§ 87.

§ 4. In a suit for any debt, the defendant may at the trial prove, and have allowed against such debt, any payment or set off which is so described in his plea, or in an account filed therewith, as to give the plaintiff notice of its nature, but not otherwise. Although the claim of the plaintiff be jointly against several persons and the set off is of a debt not to all, but only to a part of them, this section shall extend to such set off, if it appear that the persons, against whom such claim is, stand in the relation of principal and surety, and the person entitled to the set off is the principal.*

1830-31, p. 62,
ch. 11, § 62.
6 Munf. 120, 358.
2 Rand. 426.
6 Rand. 169.
3 Leigh 78.
3 Grat. 91.
4 Grat. 176.

§ 5. In any action on a contract, the defendant may file a plea, alleging any such failure in the consideration of the contract, or fraud in its procurement, or any such breach of any warranty to him of the title or the soundness of personal property, for the price or value whereof he entered into the contract, as would entitle him, either to recover damages at law from the plaintiff, or the person under whom the plaintiff claims, or to relief in equity, in whole or in part, against the obligation of the contract; or if the contract be by deed, alleging any such matter existing before its execution, or any such mistake therein, or in the execution thereof, as would entitle him to such relief in equity; and in either case alleging the amount to which he is entitled by reason of the matters contained in the plea. Every such plea shall be verified by affidavit.

1830-31, p. 62,
ch. 11, § 63, 64.

§ 6. If a defendant, entitled to such plea as is mentioned in the preceding section, shall not tender it, or though he tender it, if it be rejected for not being offered in due time, he shall not be precluded from such relief in equity as he would have been entitled to if the preceding section had not been enacted. If any such plea be rejected by the court as bad, or adjudged insufficient on demurrer, or if, when issue in fact is joined thereon, such issue be found against the defendant, he shall be barred of relief in equity upon the matters alleged in the plea, unless upon such ground as would entitle a party to relief against a judgment in other cases. Every such issue in fact shall be upon a general replication that the plea is not

* See 1 Wash. 79, 167, 221; 2 Call 409; 3 Call 9; 1 Munf. 388, 529; 6 Munf. 24; 4 Rand. 359; 6 Rand. 519, 580; 3 Leigh 695; 5 Leigh 30; 6 Leigh 278; 7 Leigh 296; 12 Leigh 627.

true; and the plaintiff may give in evidence, on such issue, any matter which could be given in evidence under a special replication, if such replication were allowed.

§ 7. Nothing in this chapter shall impair or affect the obligation of any bond or other deed deemed voluntary in law upon any party thereto, or his representatives. 1830-31, p. 62, ch. 11, § 62.

§ 8. If the defendant file a plea or account of set off which covers or applies to part of the plaintiff's demand, judgment may be forthwith rendered for the part not controverted and the costs accrued until the filing of the plea or account, and the case shall be proceeded with for the residue, as if the part for which judgment was rendered had not been included therein. And if, in addition to such plea or account, the defendant plead some other plea, going to the whole or residue of the demand, the case shall not be continued as to the part not controverted by the plea or account of set offs, unless the additional plea be also verified by affidavit, or good cause be shewn for such continuance.

§ 9. A defendant who files a plea or account under this chapter shall be deemed to have brought an action against the plaintiff, (at the time of filing the same,) for the matters mentioned in such plea or account, and the plaintiff shall not, after the plea or account is filed, dismiss his case without the defendant's consent, but shall be entitled to every ground of defence against the defendant's demand, of which he might have availed himself by any special plea or otherwise in any action brought against him upon the same demand. On the trial of the issue in such case, the jury shall ascertain the amount to which the defendant is entitled, and apply it as a set off against the plaintiff's demand, and, if the said amount be more than the plaintiff is entitled to, shall ascertain the amount of the excess, and fix the time from which interest is to be computed on the same, or any part thereof. Judgment, in such case, shall be for the defendant against the plaintiff for said excess, with such interest from the said time till payment.

1830-31, p. 62, ch. 11, § 62.
9 Geo. iv. ch. 14, § 4.

1 Munf. 150.
5 Grat. 460.

CHAPTER CLXXIII.

OF THE DEATH OR CHANGE OF PARTIES; AND THE DISCONTINUANCE OF CAUSES NOT PROSECUTED.

SEC.

1. When death or other fact occurs after verdict and before judgment.
2. Where it occurs as to any of several plaintiffs or defendants, in a suit, the cause of which survives for or against others.

SEC.

3. For and against whom *scire facias* may be sued out; when suit may be revived on motion; when new party may have a continuance or amend pleadings.
4. *Scire facias* may be issued in vacation; order of revival may be entered at rules.

SEC.

5. Where party, whose powers as committee or representative cease, is defendant, how suit is proceeded in.
6. When suit will be discontinued, unless revived.

SEC.

7. Where for seven years no proceeding in a case but to continue it, the court may strike it from the docket.

1 R. C. p. 499,
§ 38.
2 Munf. 336.

§ 1. Where a party dies, or becomes convict of felony, or insane, or a female party marries, or the powers of a party, who is a personal representative or committee, cease, if such fact occur after verdict, judgment may be entered as if it had not occurred.

1 R. C. p. 498,
§ 38.

1 Munf. 269.

9 Leigh 308.

10 Leigh 186.

12 Leigh 33, 174.]

§ 2. Where such fact occurs in any stage of a cause, whether it be in a court of original or appellate jurisdiction, if it occur as to any of several plaintiffs or defendants, the suit may proceed for or against the others, if the cause of suit survive to or against them.

1 R. C. p. 386,

§ 41; p. 496, § 37;

p. 507, § 71; p.

631, § 64.

1820-21, p. 21, ch.

14.

1825-6, p. 15, ch.

15, § 2.

1828-9, p. 25, ch.

30.

1839, p. 42, ch. 66,

§ 1.

1840-41, p. 48, ch.

15, § 66.

1848-9, p. 52, 3,

ch. 99.

1 Wash. 138, 154,

322.

6 Call 44.

1 H. & M. 330.

2 H. & M. 211.

3 H. & M. 217,

501.

Gilm. 145.

2 Rand. 454.]

3 Rand. 14.

2 Va. Cas. 134.

2 Leigh 16.

6 Leigh 42, 344.

7 Leigh 325, 720.

3 Grat. 283.

4 Grat. 86.

§ 3. In any stage of any case a *scire facias* may be sued out for or against the committee of any party who is insane or convict, or for or against a person before insane, the powers of whose committee have ceased, or for or against the husband of any such female party, or for or against the personal representative of the decedent who or whose personal representative was a party, or for or against the heirs or devisees of a decedent who was a party, to shew cause why the suit should not proceed in the name of him or them. Or where the party dying, or whose powers cease, or such insane person, convict, or female is plaintiff or appellant, the person or persons for whom such *scire facias* might be sued out, may, without notice or *scire facias*, move that the suit proceed in his or their name. In the former case, after service of the *scire facias*, or in the latter case, on such motion, if no sufficient cause be shewn against it, an order shall be entered that the suit proceed according to such *scire facias* or motion. Any such new party (except in an appellate court,) may have a continuance of the case at the term at which such order is entered; and the court may allow him to plead anew or amend the pleadings so far as it deems reasonable; but in other respects the case shall proceed to final judgment or decree for or against him, in like manner as if the case had been pending for or against him before such *scire facias* or motion.

1 R. C. p. 202,

§ 35, 36; p. 194,

§ 17.

1819-20, p. 25, ch.

31, § 1.

§ 4. The clerk of the court in which the case is, may issue such *scire facias* at any time, and an order may be entered at rules for a case to proceed in the name of the proper party, although the case be on the court docket.

1 R. C. p. 386,

§ 41.

1848-9, p. 52-3,

ch. 99.

§ 5. Where the party whose powers cease is defendant, the plaintiff may continue his suit against him to final judgment or decree; but he shall not, at law, proceed in the same action against such defendant and his successor; nor shall he, in equity, proceed against both upon his previous bill, unless an order, that the suit proceed against the former party, be entered at the first term after service of a *scire facias* for or against such successor.

§ 6. If the committee, husband, personal representative, heirs or devisees of the plaintiff or appellant who was a party, or of the decedent whose personal representative was plaintiff or appellant, shall not make such motion, or apply for such *scire facias*, at or before the second term of the court next after that at which there may have been a suggestion on the record of the fact making such *scire facias* or motion proper, the suit of such plaintiff or appellant shall be discontinued, unless good cause be shewn to the contrary.

§ 7. Any court in which is pending any case wherein for more than seven years there has been no order or proceeding but to continue it, may, in its discretion, order such case to be struck from its docket; and it shall thereby be discontinued. A court making such order may direct it to be published by the public printer. Any such case may be reinstated, on motion, within one year from the date of such order, but not after.

CHAPTER CLXXIV.

OF THE REMOVAL OF CAUSES PENDING IN ONE COURT TO ANOTHER.

SEC.

1. Where suit remains pending in county or corporation court more than a year.

2. } Power of circuit court or judge, to
3. } remove cases in a circuit, county, or corporation court.

SEC.

4. Power of general court to remove suit in a circuit court.

5. When suit is removed, clerk's duty; proceedings in court to which it is removed; costs attending removal.

§ 1. Where any suit shall have remained pending in a county or corporation court more than a year, without being determined, such court, on the motion of any party to such suit, or his representative, (without notice,) shall order it to be removed to the circuit court having jurisdiction over such county or corporation.

§ 2. On the motion of any party to a suit in a county or corporation court, who desires to remove the same into the circuit court having jurisdiction over such county or corporation, the said circuit court, or the judge thereof in vacation, after twenty days' previous notice to the adverse party, may order such removal.

§ 3. On the motion of any party to a suit in a circuit court, the said court may order it to be removed to any other circuit court, or to the court of the county or corporation for which the former circuit court is held. The judge of said court, in vacation, may make such order, after reasonable notice to the adverse party. The order of removal may be made by the court or judge, without motion or notice, when

the judge is so situated as to render it improper, in his judgment, for him to decide, or preside at the trial of, the cause.

1 R. C. p. 222,
§ 8, 9; p. 238,
§ 51.

§ 4. On the motion of any party to a suit in a circuit court, after thirty days' previous notice, the general court may order it to be removed to another circuit court, or into the general court.

1830-31, p. 35, ch.
11, § 38

§ 5. When any suit is ordered to be removed under this chapter, the clerk of the court from which, shall transmit to the clerk of the court to which, it is removed, the original papers therein, with the copies of all rules and orders made, and a statement of the costs incurred by each party therein: whereupon the case shall be proceeded in, heard and determined by the court to which it is removed, as if it had been brought, and the previous proceedings had, in said court. The costs attending such removal, shall be charged as may be thought just by the court from which, or if it make no order on the subject, by the court to which, the case is removed.

CHAPTER CLXXV.

OF THE APPOINTMENT OF COMMISSIONERS IN CHANCERY, THE REFERENCE OF ACCOUNTS TO THEM, AND THE PROCEEDINGS THEREUPON.

SEC.

1. As to case in commissioner's hands when chapter takes effect.
2. Power to appoint commissioners; how many; how removable.
3. Accounts to be referred to such commissioner, unless otherwise agreed by the parties; his duty; when a justice who is commissioner shall not sit.
4. Power in court to make publication in a newspaper equivalent to personal service.

SEC.

5. Power of circuit judge in vacation to direct an account.
6. When commissioner may submit a point to a circuit court or judge.
7. } Power of commissioner to adjourn proceedings; how his report must be made out; his liability if not properly made out;
8. } how long he retains it; how excepted to; what he returns with report.
9. When cause is heard on commissioner's report.

§ 1. Any commissioner in chancery may complete the execution of any order or decree in his hands, when this chapter takes effect, unless the court otherwise direct.

1 R. C. p. 200,
§ 22.
1830-31, p. 68,
§ 76.
1833-4, p. 74,
ch 60.

§ 2. Each court may, from time to time, appoint commissioners in chancery, or for stating accounts, who shall be removable at its pleasure; there shall not be more than three such commissioners in office at the same time for the same court.

1 R. C. p. 257,
§ 63; p. 258, § 65.
1830-31, p. 68,
§ 76.
2 Grat. 330.

§ 3. Accounts to be taken in any case, shall be referred to a commissioner so appointed, unless the parties interested agree that they be referred to some other person. A justice, who is a commissioner, shall not decide on the reference of an account,

nor on a report made by him. Every commissioner shall examine, and report upon, such accounts and matters as may be referred to him by any court.

§ 4. The court ordering an account to be taken, may direct that notice of the time and place of taking it be published once a week for four successive weeks in some convenient newspaper, and that such publication shall be equivalent to personal service of such notice on the parties, or any of them.

§ 5. Any circuit judge may, in vacation, direct any proper account to be taken in a cause in a court of his circuit. 1 R. C. p. 200, § 23. 1830-31, p. 68, § 77.

§ 6. A commissioner who doubts as to any point which arises before him, in taking an account to be returned to a circuit court, may, in writing, submit the point to such court, or the judge thereof, who may instruct him thereon. 1 R. C. p. 200, § 23. 1830-31, p. 68, § 77.

§ 7. A commissioner may adjourn his proceedings from time to time, after the day to which notice was given, (without any new notice) until his report is completed; and when it is completed, unless it be otherwise ordered by the court, or agreed by the parties, he shall retain it ten days for their examination. Any party, without being at the expense of taking a copy, may inspect the report, and file exceptions thereto; and the commissioner shall, with his report, return the exceptions, and such remarks thereon as he may deem pertinent, and the evidence relating thereto. 1825-6, p. 16, § 4.

§ 8. With his report the commissioner shall return the decrees, orders and notices under which he acted. He shall not copy in his account or report any paper; and if there has been a previous account, he shall not copy it into his, but, taking it as the basis of his, correct the errors and supply the defects thereof by an additional statement. Every thing improperly copied into a commissioner's account shall be expunged at his costs, on the application of either party; and if on account of his negligence or misconduct a report be recommitted, he shall bear the costs occasioned thereby.

§ 9. A cause may be heard upon a commissioner's report, after it shall have been returned thirty days; and if the report be under an order recommitting a former report, the cause may be heard without waiting the said thirty days. 1825-6, p. 16, § 6. 1835-6, p. 34, ch. 44, § 1. 4 Grat. 87.

CHAPTER CLXXVI.

OF EVIDENCE.

SEC.

1. Of acts and resolutions of the legislature.
2. Journal of either house.
3. Signature of the judges or governor.
4. Record or paper in clerk's office of a court or office of secretary of the commonwealth, clerk of

SEC.

- council, treasurer, register, or either auditor.
5. Defendant in a suit required to plead to an attested copy as if it were an original.
6. When court may deliver out original paper; retaining a copy.

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| <p>SEC.</p> <p>7. } When and how court may have its records or those in surveyor's office, bound or copied; how expense is paid; copy examined; when its correctness certified, credit given to it.</p> <p>8. }</p> <p>9. }</p> <p>10. } When a book or paper in a clerk's office is lost or illegible, how new record is made; effect thereof; how expense is defrayed.</p> <p>11. }</p> <p>12. } How contents of such record or paper may be proved before commissioner; his journal, and evidence before him, returned to clerk's office.</p> <p>13. }</p> <p>14. How to authenticate records of a court of another state or of the <i>United States</i>; their effect.</p> <p>15. Records and exemplifications of office books in a public office of the <i>United States</i> or of a state, not pertaining to a court.</p> <p>16. Foreign deeds, powers of attorney, policies of insurance, &c.</p> <p>17. Person competent as a witness, though assessed with levies for a county or corporation.</p> <p>18. When such person, or an officer of a county or corporation, or a fiduciary is not incompetent by reason of his being a party to a case or liable for costs.</p> <p>19. When a negro or Indian is competent; when not.</p> <p>20. Summons for witness; how issued; and to whom directed.</p> <p>21. How <i>subpoena duces tecum</i> is issued.</p> <p>22. Witness failing to attend may be fined and proceeded against by attachment.</p> <p>23. Witness attending and refusing to give evidence or produce writing, may be committed to jail.</p> <p>25. Of interpreters.</p> | <p>SEC.</p> <p>24. } Who may administer an oath or take an affidavit. How affidavit taken out of this state is authenticated.</p> <p>26. }</p> <p>27. What affidavit is sufficient to prove non-residence of a witness. How publication in a newspaper is proved.</p> <p>28. Deposition may be taken in this state without a commission; by whom; how certified. As to taking deposition of a party.</p> <p>29. How commission is issued to take deposition of witness out of this state; to whom directed; how deposition authenticated.</p> <p>30. Notice to be given of taking a deposition; in what stage of a suit in equity deposition may be returned and read.</p> <p>31. Under what circumstances deposition may be read at law.</p> <p>32. When party taking deposition does not read it, other party may.</p> <p>33. How deposition may be taken after decision of a cause in which an appeal or <i>supersedeas</i> lies.</p> <p>34. How to perpetuate testimony.</p> <p>35. } Allowance to witness for attendance; how entered and paid; how dispute between witness and party is determined; power of court to restrict taxation in costs for witnesses.</p> <p>36. }</p> <p>37. }</p> <p>38. } How to compel discovery or production of document by adverse party; whether right to proceed by bill in equity for discovery is affected by proceeding under these sections.</p> <p>39. }</p> <p>40. }</p> <p>41. } Effect of party's absence for seven</p> <p>42. } years.</p> <p>43. Excluding evidence for want of particulars of claim or defence.</p> <p>44. Evidence in mitigation of damages.</p> |
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Proceedings of legislature; and signature of governor or judges.

1 R. C. p. 510,
§ 91.
See ante, p. 99,
ch. 16, § 16.

5 Munf. 324.

8 and 9 Vict. p.
1147, ch. 113, § 3.

1d. § 2.

§ 1. Acts and resolutions of the general assembly, though local or private, may be given in evidence without being specially pleaded; and an appellate court shall take judicial notice of such as appear to have been relied on in the court below.*

§ 2. Copies of the journal of either house of the assembly, printed by its printer, shall be received as evidence for any purpose for which the original journal could be received.

§ 3. All courts and officers shall take notice of the signature of any of the judges, or of the governor of this state, to any judicial or official document.

* As to acts of congress, see 5 Leigh 471; laws of other states, 2 Va. Cas. 95; 5 Rand. 126.

Records and papers in public offices.

§ 4. A copy of any record or paper in the clerk's office of any court, or in the office of the secretary of the commonwealth, clerk of the council, treasurer, register or either auditor, attested by the officer in whose office the same is, may be admitted as evidence in lieu of the original. And the certificate of the first auditor of the fact and time of the return of any real estate as delinquent, or of the sale thereof for taxes, shall be *prima facie* evidence of what is stated in such certificate. Any such copy or certificate purporting to be sealed, or sealed and signed, or signed alone, by any such officer, may be admitted as evidence without any proof of the seal or signature, or of the official character of the person whose name is signed to it.

1 R. C. p. 322, ch. 86, § 4; p. 350, ch. 91, § 3; p. 509, § 85.
1820-21, p. 103, ch. 74.
1830-31, p. 90, § 7.
1845-6, p. 62, ch. 83.
8 and 9 Vict. p. 1147, ch. 113, § 1.
2 Wash. 215, 281.
5 Call 279, 529.
4 Munf. 473.
Gilm. 235.
2 Rand. 539.
2 Va. Cas. 111.
7 Leigh 68.
4 Grat. 73.

§ 5. Such a copy of any writing filed in a suit, may be filed in another suit on the same writing, and the defendant shall plead thereto as if the original were filed.

1 R. C. p. 509, § 85.
1827-8, p. 22, ch. 27, § 1.

§ 6. The court in the clerk's office whereof there is an original paper filed in a cause (although decided) may, for good cause, order it to be delivered to any person, retaining in its stead a copy thereof, and may make any order to prevent the improper use of the original.

1827-8, p. 22, ch. 27, § 1, 2.

§ 7. The court of any county may order any of the books or records in the office of the surveyor of such county, and any court may order any of its own books or records, to be bound or transcribed, and make a reasonable allowance therefor, which shall be chargeable to the county or town when the order is by a county or corporation court, and in other cases be paid out of the treasury.

1825-6, p. 46, ch. 50.
1826-7, p. 17, ch. 17, § 2, 3.
1827-8, p. 23, ch. 29.

§ 8. No such allowance shall be made for any transcript until commissioners appointed for the purpose by the court shall have examined it, and written at the foot thereof a certificate of its correctness. Thenceforth the same faith and credit shall be given to it that the book or record transcribed would have been entitled to.

§ 9. A court may have any of its books or records taken out of the county or corporation to be bound.

Id.

§ 10. Where any book containing judgments, decrees or proceedings of a court is lost or illegible, and there can be again entered correctly, by means of any writing, any matters which were in such book, such court may cause its clerk to have such matters re-entered, and such re-entries shall have the same effect as the original entries. For any services of the clerk under this section, not rendered necessary by his own neglect, the court shall allow him a reasonable compensation, which shall be chargeable on the county or corporation.

1839-46, p. 48, ch. 55, § 3.

§ 11. Where any such book, or any book containing the record of wills, deeds, or other papers, or where any paper filed in a clerk's office, is lost or illegible, the clerk in whose

1 R. C. p. 515, ch. 130, § 42.
1839-40, p. 47, 8, ch. 55, § 2.

office such book or paper was, upon the production to him of any original paper which was recorded in such book, or of an attested copy of the record thereof, or of any thing else in such book, or of any paper so filed, shall, on application, record the same anew. The record shall shew whether it is made from an original or a copy, and how the paper from which it was made was authenticated or attested. Such record shall have, as far as may be, the same effect that the record or paper for which it is substituted would have had.

1 R. C. p. 516, ch. 130, § 3.
1841-2, p. 56, 58, ch. 100, § 1, 3, 7.
3 Rand 167.

§ 12. Any person desirous of proving the contents of any paper so filed, or any thing which was of record in any such book, may file with a commissioner holding his office under the appointment of the circuit court for the county or corporation in which the clerk's office is, a petition stating the nature of the paper or record, the contents of which he desires to prove, and what persons may be affected by such proof. Whereupon the commissioner shall appoint a time and place for proceeding on the said petition, whereof reasonable notice shall be given. If any person who may be affected by the proof be an infant, the commissioner shall appoint a guardian *ad litem* to attend to the case on his behalf.

Id.

§ 13. The commissioner shall, at the instance of any person interested, take in writing evidence of witnesses. He may adjourn from time to time, and shall keep a journal of his proceedings, and return the same with the evidence taken by, or filed with him, to the clerk's office in which the book or paper was that is mentioned in the petition, there to remain as evidence of rights when better cannot be had.

Records and office books out of this state.

1 Story's Laws U. S. p. 93.
1843-4, p. 53, ch. 68, § 1.

4 Munf. 241.
6 Leigh 523.
7 Leigh 234.

§ 14. The records and judicial proceedings of any court of the *United States*, or of any state, attested by the clerk thereof, with the seal of the court annexed, if there be a seal, and certified by the judge, chief justice, or presiding magistrate of such court, to be attested in due form, shall have such faith and credit given to them in every court within this state, as they have in the courts of the state, territory or district whence the said records come.

2 Story's Laws U. S. p. 947.

§ 15. All records and exemplifications of office books kept in any public office of the *United States*, or of a state, not appertaining to a court, shall be evidence in any court or office in this state, if attested by the keeper of the said records or books, and the seal of his office annexed, if there be a seal, and certified by the presiding justice of the county or district in which such office is, or of the governor, the secretary of state, the chancellor, or the keeper of the great seal of the state, to be attested in due form, and by the proper officer; such certificate, if given by the presiding justice of a court, shall be authenticated by the clerk or prothonotary of the said court, who shall certify under his hand and the seal of his

office, that the said presiding justice is duly commissioned and qualified; or if said certificate be given by the governor, the secretary of state, the chancellor or keeper of the great seal, it shall be under the great seal of the state in which the said certificate is made.

Foreign deeds, powers of attorney, policies of insurance, &c.

§ 16. Every deed or power of attorney executed out of this state, the acknowledgment or proof of which is certified so that it might be admitted to record under chapter one hundred and twenty-one, and every policy of insurance, charter party, copy from a record in any foreign court, or from a register of births and marriages in any place out of the *United States*, if it be attested by a notary public, under his seal of office, that such policy, charter party, record or register was made, entered, or kept in due form according to the law of the place in which it was made, entered or kept, and that such copy is true, and the official character of such notary be certified to by any court of record, or the mayor, or other chief magistrate of any county, city, town or borough, or under the great seal of the state, kingdom, province, island or colony, in which such notary may reside, shall be evidence in any court in this state.

1 R. C. p. 371,
ch. 101.
1827-8, p. 22, ch.
28, § 1.
See ante, p. 512,
ch. 121.

1 Rand. 456.
6 Leigh 523.

Competency of witnesses.

§ 17. No person assessed, or liable to be assessed with levies for any county or corporation, shall be disabled from giving evidence by reason only of such assessment or liability.

3 and 4 Vict. ch.
26, § 1.

§ 18. No such person, and no officer of a county or corporation, shall be incompetent to give evidence in any case by reason only of his being a party to such case, or of his being liable to costs in respect thereof, when he is only a nominal party thereto, and liable to contribute to such costs only in common with other persons assessed with the levies of such county or corporation. No trustee, executor, or other fiduciary, shall be incompetent as a witness in any case by reason only of his being a party thereto, or of his being liable to costs in respect thereof; but if liable to costs, he shall not be competent, unless some person undertake to pay the same.

Id. § 2.

§ 19. A negro or Indian shall be a competent witness in a case of the commonwealth for or against a negro or Indian, or in a civil case to which only negroes or Indians are parties, but not in any other case.

1 R. C. p. 422,
§ 5; p. 516, ch.
131, § 3.

6 Leigh 74.
7 Leigh 438.

How witnesses are compelled to testify.

§ 20. A summons may be issued, directed as prescribed in the second section of chapter one hundred and seventy, commanding the officer to summon any person to attend on the

1 R. C. p. 200,
§ 25; p. 258, § 66;
p. 456, § 9; p.
498, § 40; p. 508,
§ 76; p. 518, § 8.

1824-5, p. 29, ch. 34.
1830-31, p. 68, § 79.
1841-2, p. 57, ch. 100, § 1.
1848-9, p. 98, ch. 146.

day and at the place that such attendance is desired, to give evidence before a court, arbitrators, umpire, justice, coroner, surveyor, notary public, or any commissioner appointed by a court. The summons may be issued, if the attendance be desired at a court, by the clerk thereof, and in the other cases, by any person before whom, or a clerk of a court of a county or corporation in which, the attendance is desired; or if it be desired before a justice, by such or any other justice; it shall express on whose behalf, and in what case, or about what matter, the witness is to attend. This section shall be deemed to authorize a summons to compel attendance before commissioners or other persons appointed by authority of another state; but only in case they be citizens of this state, and the summons requires the attendance of the witness at a place not out of his county.

1 R. C. p. 242, § 71.
1830-31, p. 55, § 37.
1 Will. iv. ch. 22, § 5.
3 and 4 Will. iv. ch. 42, § 40.

§ 21. When it appears by affidavit that a writing or document in the possession of a person not a party to the matter in controversy, is material, and proper to be produced before a court, or any person appointed by it or acting under its process or authority, such court, or a judge thereof in vacation, may order the clerk of said court to issue a *subpœna duces tecum* to compel such production at a time and place to be specified in the order.

1 R. C. p. 200, § 25; p. 517, § 4.
1824-5, p. 30, ch. 34.
1830-31, p. 68, § 75.
1848-9, p. 98, ch. 146, § 2.
1 Will. iv. ch. 22, § 5, 8.

§ 22. If any person, after being served with such summons, fail to attend to give evidence, or to produce such writing or document, according to the summons, the court whose clerk issued the summons, or if it was not issued by a clerk, a court of the county or corporation in which the attendance is desired, on a special report thereof by the person or persons before whom there was the failure to attend, and on proof that there was paid to him, (if it was required,) a reasonable time before he was required to attend, the allowance for one day's attendance, and his mileage and tolls, shall, after service of a notice to, or rule upon, him to shew cause against it, (if no sufficient cause be shewn against it,) fine him not exceeding twenty dollars, to the use of the party for whom he was summoned, and may proceed by attachment to compel him to attend and give his evidence, at such time and place as it may deem fit. The witness shall, moreover, be liable to any party grieved, for damages.

1 R. C. p. 517, § 5.

§ 23. If a person, after being served with such summons, shall attend, and yet refuse to be sworn, or to give evidence, or to produce any writing or document required, he may, by order of the court whose clerk issued said summons, or of the person before whom he was summoned to attend, be committed to jail, there to remain until he shall, in custody of the jailor, give such evidence or produce such writing or document.

1 R. C. p. 200, § 24; p. 258, § 64; p. 517, § 5.
1824-5, p. 29, ch. 34.
1848-9, p. 98, § 3.
3 and 4 Will. iv. ch. 22, § 7; ch. 42, § 41.

§ 24. Any person before whom a witness is to be examined, may administer an oath to such witness.

Interpreters.

§ 25. Interpreters may be sworn truly to interpret, when necessary. 1 R. C. p. 510, § 91.

Of affidavits and depositions.

§ 26. In any case in which an oath might be administered by, or an affidavit made before, a justice, the same may be done by or before a notary public, or a commissioner appointed by the governor, or by a court. An affidavit may also be made before any officer of another state or country authorized by its laws to administer an oath, and shall be deemed duly authenticated if it be subscribed by such officer, and there be annexed to it a certificate of the clerk or other officer of a court of record of such state or country, under an official seal, verifying the genuineness of the signature of the first-mentioned officer and his authority to administer an oath. 1840-41, p. 76, ch. 65, § 3. 1843-4, p. 52, ch. 67, § 3. 1847-8, p. 61, ch. 90, § 2.

§ 27. In any suit an affidavit that a witness or party resides out of this state, or is out of it, shall be *prima facie* evidence of the fact, although such affidavit be made by a party, and without previous notice. Where any thing is required by any statute to be published in a newspaper, the certificate of the editor or affidavit of any other person shall be admitted as evidence of what is stated therein as to the publication. 1836-7, p. 42, ch. 67, § 10. 5 Munf. 346. 12 Leigh 33.

§ 28. In any pending case the deposition of a witness, whether a party to the suit or not, may, without any commission, be taken in this state by a justice or notary public, or by a commissioner in chancery; and if certified under his hand, may be received without proof of the signature to such certificate. When a deposition appears to be of a party, all exceptions may be made to the reading of it which could have been made if it were taken under a special commission; but the taking of such deposition shall not deprive the party taking it of any relief he would otherwise be entitled to against the deponent. 1 R. C. p. 300, ch. 83, § 2; p. 522, ch. 132. 1822-3, p. 40, ch. 39. 1825-6, p. 16, § 5. 1826-7, p. 19, ch. 20, § 1. 1833-4, p. 75, ch. 62, § 2. 1 Will. iv. ch. 22, § 10. 2 Leigh 401, 426. 5 Leigh 88, 219. 2 Grat. 216.

§ 29. On affidavit that a witness resides out of this state, or is out of it, in the service thereof, or of the *United States*, a commission to take his deposition may be issued by the clerk of the court wherein the case is pending, directed, if the deposition is to be taken out of this state but within the *United States*, to any commissioner appointed by the governor of this state, or to any justice or notary public of the state wherein the witness may be, and directed, if the deposition is to be taken in a foreign country, to such commissioner or commissioners as may be agreed upon by the parties or appointed by the court, or if there be none such, to any American minister plenipotentiary, charge d'affaires, consul-general, vice-consul, or commercial agent appointed by the government of the *United States*, or to the mayor or other chief magistrate of any city, town or corporation in such country, or any notary public therein. Any person or persons to whom a commission is so

directed, may administer an oath to the witness, and take and certify the deposition with his official seal annexed; and if he have none, then the genuineness of his signature shall be authenticated by some officer of the same state or country, under his official seal, unless the deposition is taken by a justice out of this state but in the *United States*; in which case his certificate shall be received without any seal annexed, or other authentication of his signature.

1 R. C. p. 216,
§ 102, 103, 104;
p. 519, § 15 to 19;
1822-3, p. 39. ch.
37, § 1.
1825-6, p. 17, ch.
15, § 9.

§ 30. Reasonable notice shall be given to the adverse party of the time and place of taking every deposition; and in a suit in equity a deposition may be read, if returned before the hearing of the cause, or though after an interlocutory decree, if it be as to a matter not thereby adjudged, and be returned before a final decree.*

1 R. C. p. 519,
§ 15 to 19.
1843-4, p. 17,
ch. 14.
1846-7, p. 67, ch.
78.

1 Will. iv. ch. 22,
§ 10.
2 Wash. 75.
2 H. & M. 31.
3 Leigh 682.
4 Grat. 216.

§ 31. A deposition in a case at law, taken on such notice, under the three preceding sections, may be read in such case, if, when it is offered, the witness be dead, or out of this state, or one of its judges, or a superintendent of a lunatic asylum, distant more than thirty miles from the place of trial, or in any public office or service the duties of which prevent his attending the court, or be unable to attend it from sickness or other infirmity, or be more than a hundred miles from the place of trial. But where the only ground of reading a deposition is, that the witness is more than a hundred miles from the place of trial, on motion to the court, before the commencement of the trial, it may, for good cause shewn, require such witness to attend in person.

§ 32. When a deposition has been filed, if not read on the trial by the party taking it, it may be read by the other party.

1841-2, p. 59,
ch. 101.

§ 33. In any case wherein there has been a judgment, decree or order, from or to which an appeal, writ of error or *supersedeas* has been, or might be allowed, a deposition may be taken for any party to such case, or for or against his or her husband, personal representative, heirs or devisees, in like manner, and by such persons, as is before prescribed for pending cases; and it may be read in any future trial that may be directed, if the same could properly be read had there been no such judgment, decree or order.

How testimony may be perpetuated.

§ 34. A person desirous of perpetuating the testimony of witnesses as to a matter in respect to which there is no suit, may file with a commissioner in chancery of a court wherein, if there were a bill to perpetuate the testimony, such bill might be filed, a petition stating such matter, and what persons may be affected by the testimony. Whereupon the commissioner shall appoint for proceeding on the petition a time and place, whereof reasonable notice shall be given to the persons who may be so affected. If any of them be an infant

* See 2 Wash. 75; 2 H. & M. 536; 3 H. & M. 1; 4 Munf. 371; 1 Rand. 255; 5 Rand. 126; 10 Leigh 629; 11 Leigh 393; 12 Leigh 1; 3 Grat. 330.

or insane person, the commissioner shall appoint a guardian *ad litem* to attend on his behalf. At such time and place the commissioner shall take in writing the evidence of any witnesses adduced in respect to the said matter by the petitioner, or by the person so affected. He may adjourn from time to time, and shall return a report of his proceedings, with the testimony taken by him, to the clerk's office of the court by which he was appointed, and such testimony shall have the same effect as if it had been taken on a bill to perpetuate testimony. Such court may make such order as to the costs as may seem to it right.

Allowance to witnesses for attendance.

§ 35. A person attending as a witness under a summons, shall have fifty cents for each day's attendance, and four cents per mile for each mile beyond ten miles necessarily travelled to the place of attendance, and the same for returning, besides the tolls at the bridges and ferries which he crosses, or turnpike gates he may pass. On his oath an entry of the sum he is entitled to, and for what, and by what party it is to be paid, shall be made, when the attendance is before either house, or a committee of the general assembly, by the clerk of such house or committee, and in other cases by the clerk of the court in which the case is, or the person before whom the witness attended. A witness summoned to attend in several cases may have the entry made against either of the parties by whom he is summoned; but no witness shall be allowed for his attendance in more than one case at the same time.

1 R. C. p. 254,
§ 34; p. 518, § 9
to 13
1819-20, p. 38,
ch. 55, § 2.
1824-5, p. 29,
ch. 34.
1842-3, p. 30, ch.
40, § 4; ch. 41, § 1.

§ 36. The sum to which a witness is entitled, shall be paid out of the treasury in any case of attendance before either house, or a committee of the general assembly, and in any other case in which the attendance is for the commonwealth, except where it is otherwise specially provided; in all other cases, it shall be paid by the party for whom the summons issued. The payment shall be on a certificate of the person required by the preceding section to make the entry. Any dispute (before or after issuing the certificate) between the witness and the party against whom his claim is made, as to its justice or amount, may, when the case is in a court or before a justice, be determined by such court or justice.

§ 37. The court or justice may restrict the taxation in the costs for witnesses, to so many as may be deemed just. No entry for a witness shall be made against a party recovering costs, after execution has issued for such party; and in no case shall there be an entry of a witness for attendance at a term, after sixty days from the end of such term.

1 R. C. p. 254,
§ 34; p. 519, § 14.

Compelling party to discover or produce a document.

§ 38. In a case at law, a party may file in the clerk's office, and in a case or matter before a commissioner of a court,

1830-31, p. 65, ch.
11, § 68.

1841-2, p. 57, ch.
100, § 3, 4.
Ante, p. 642, ch.
170, § 2.

3 Rand. 434.
8 Leigh 489.
10 Leigh 284.
11 Leigh 251.

any person interested may file with such commissioner interrogatories to any adverse party or claimant. The clerk or commissioner shall issue a summons, directed as prescribed in the second section of chapter one hundred and seventy, requiring the officer to summon the proper party to answer said interrogatories, and make return thereof within such time, not exceeding sixty days, as may be prescribed in the summons. With the summons, there shall be a copy of the interrogatories, which shall be delivered to the person served with the summons, at the time of such service; if the summons be against a plaintiff who is not a resident of this state, the service may be on his attorney at law. When the court in which the case is, or whose commissioner issued the summons, is satisfied that the interrogatories are relevant, and such as the person to whom they are propounded, would be bound to answer upon a bill for discovery, and sees also that the interrogatories have not been unreasonably delayed, it may, if the said person do not, in a reasonable time, file answers thereto upon oath, or, if he file answers which are evasive, attach him and compel him to answer in open court, or to answer more explicitly. It may, also, if it see fit, set aside a plea of his, and give judgment against him by default, or, if he be plaintiff, order his suit to be dismissed with costs, or, if he be claiming a debt before a commissioner, disallow such claim. Answers to such interrogatories may be used as evidence at the trial of the cause in the same manner and with the same effect as if obtained upon a bill of discovery.

1830-31, p. 65, ch.
11, § 68.
1841-2, p. 57, ch.
100, § 3, 4.

§ 39. In any case at law, a party may file in the clerk's office, and in any case or matter before a commissioner of a court, any person interested may file with such commissioner an affidavit, setting forth that there is, he verily believes, a book of accounts or other writing, in possession of an adverse party or claimant, containing material evidence for him, specifying with reasonable certainty such writing, or the part of such book. The clerk or commissioner shall issue a summons, directed as under the preceding section, requiring him to summon the proper party to produce such writing, or an exact copy of such part of the said book, and make return thereof as under that section. With the summons, there shall be a copy of the affidavit, which shall be delivered to the person served with the summons at the time of such service; if the summons be against a plaintiff who is not a resident of this state, the service may be on his attorney at law. When the court in which the case is, or whose commissioner issued the summons, is satisfied that the person filing such affidavit has no means of proving the contents of such writing, or of such part of the book, but by the person summoned producing what is required by the summons, and that the same is relevant and material, and sees also that the call therefor has not been unreasonably delayed, it may, unless the person summoned shall, in a reasonable time, either produce what is so

required, or answer in writing, upon oath, that he has not under his control such book or writing, or any of the like import, attach him and compel him to do the one or the other. It may, also, if it see fit, set aside a plea of such person, and give judgment against him by default, or, if he be plaintiff, order his suit to be dismissed, with costs, or, if he be claiming a debt before a commissioner, disallow such claim.

§ 40. The two preceding sections shall not preclude a person who does not file such interrogatories or affidavit, from exhibiting his bill in chancery for a discovery, as he might have done if the said sections had not been enacted. But a person filing such interrogatories or affidavit, shall not afterwards exhibit a bill in equity against the same party for the discovery or production of the same matters. 1830-31, p. 65, ch. 11, § 63, 69.

Effect of evidence of party's absence for seven years.

§ 41. If any person who shall have resided in this state go from, and do not return to, the state for seven years successively, he shall be presumed to be dead in any case wherein his death shall come in question, unless proof be made that he was alive within that time. 19 Car. 2 ch. 6, § 2, 3. 1 R. C. p. 358, ch. 97.

§ 42. If the person so presumed to be dead be found to have been living, any person injured by such presumption shall be restored to the rights of which he shall have been deprived by reason of such presumption. Id.

Excluding evidence for want of particulars of claim or defence.

§ 43. In any action or motion, the court may order a statement to be filed of the particulars of the claim, or of the ground of defence; and if a party fail to comply with such order, may, when the case is tried or heard, exclude evidence of any matter not described in the notice, declaration or other pleading of such party so plainly as to give the adverse party notice of its character. 1 R. C. p. 510, § 86.

Evidence in mitigation of damages.

§ 44. In any action for defamation, the defendant may justify by alleging and proving that the words spoken or written were true, and (after notice in writing of his intention to do so, given to the plaintiff at the time of, or for pleading to such action,) may give in evidence, in mitigation of damages, that he made or offered an apology to the plaintiff for such defamation before the commencement of the action, or as soon afterwards as he had an opportunity of doing so, in case the action shall have been commenced before there was an opportunity of making or offering such apology. 6 and 7 Vict. p. 843, ch. 96, § 1. 1 Va. Cas. 176. 12 Leigh 466.

CHAPTER CLXXVII.

OF THE COURT DOCKET; ENQUIRY OF DAMAGES; TRIAL BY JURY; AND JUDGMENTS AND DECREES OF THE COURT FOR MONEY.

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| <p>SEC.</p> <ol style="list-style-type: none"> 1. Docket in general, circuit and county or corporation court; how made out and called; and cases disposed of. 2. In circuit court, separate docket of chancery cases; which is to be called and cases disposed of. 3. Remedy if court refuse to hear a case; duty of clerk of general court in such case. 4. Power in chancery case to direct an issue; where to be tried. 5. Power of court in other cases to have issue tried or damages enquired into by jury; province of court at the trial. 6. When case in which there is to be enquiry of damages may be disposed of; power of court to make enquiry. 7. Remedy when at the trial variance appears between evidence and allegations or recitals. 8. As to bill of exceptions. 9. Argument before the jury. 10. Nonsuit not after jury retire. 11. What papers jury may carry out. 12. Where several counts, one of which is faulty. 13. Verdict in <i>detinue</i>. | <p>SEC.</p> <ol style="list-style-type: none"> 14. Verdict to fix period at which interest begins; if no period fixed, interest to be from date of verdict. 15. Power to grant new trial; how often. 16. On a bond for payment of money, how judgment is entered. 17. In action for penalty, how and when breaches assigned; what jury are to do and how judgment is entered; remedy by <i>scire facias</i> for future breaches. 18. Where no jury, court may give judgment for interest; judgment to be for such interest till payment. 19. When in joint action plaintiff, though barred as to some defendants, may have judgment against others. 20. Judgment or decree against personal representative or committee; when to be paid out of estate in his hands as fiduciary; when costs to be paid out of his own estate. 21. When court may allow executions on judgments or decrees, during the term at which rendered. |
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Of the court docket; and the order in which cases are heard.

1 R. C. p. 507,
§ 76.
1847-8, p. 52, ch.
25.

§ 1. Before every term of the general court, or a circuit court, and every quarterly term of a county or corporation court, the clerk shall make out a docket of the following cases pending, to wit: First, cases of the commonwealth, and secondly, motions and actions in the order in which the notices of the motions were filed, or in which the proceedings at rules in the actions were terminated, docketing together as new cases, those not on the docket at the previous term. He shall, under the control of the court, set the cases to certain days; and the docket shall be called, and the cases on it tried or disposed of for the term in that order, except that the court may, for good cause, take up any out of turn.

1825-6, p. 18, ch.
14.

§ 2. Before every term of a circuit court the clerk shall make out a separate docket of chancery cases in which there are motions, and of other chancery cases which have been set for hearing as to any party, or which the court is to hear upon a plea, demurrer, or exceptions to an answer; and during such term every cause on said docket shall be called and disposed of.

§ 3. Any party asking the court to hear a case, may, if the court refuse to hear it, have his application spread upon the record, with a statement of the facts in relation thereto. A copy of such statement shall be transmitted to the general court, which may thereupon award a *mandamus* to compel a hearing of the case, or remove the same to the general court, or another circuit court. The clerk of the general court shall annually, before the twentieth day of December, transmit to the general assembly copies of any such statements received by him during the year ending on the fifteenth day of that month, and also copies of the proceedings of the general court during the said year, on the same or any former statements, for which copies the said clerk shall be paid out of the treasury.

1825-6, p. 18, ch. 14.
3 Leigh 343.

Power of court to have a trial by jury, or enquiry of damages.

§ 4. Any court wherein a chancery case is pending, may direct an issue to be tried in such court, or in any circuit, county or corporation court.* But a circuit court shall not be compelled to try an issue ordered by a county or corporation court.

1 R. C. p. 205, § 47; p. 257, § 60. See ante, p. 650, ch. 171, § 33.

§ 5. A circuit, county or corporation court may, in any other case before it, have an issue tried, or an enquiry of damages made by a jury, and determine all questions con-

1 R. C. p. 231, § 12.
10 Leigh 285.

* Mr. Jefferson, (vol. 1 of his works, p. 31,) speaking of Mr. Pendleton, says: "In that one of the bills for organizing our judiciary system which proposed a court of chancery, I had provided for a trial by jury of all matters of fact, in that as well as in the courts of law." He defeated it by the introduction of four words only, "if either party choose." As to this the memory of Mr. Jefferson seems not entirely accurate. Upon examination of the act of October 1777, establishing a high court of chancery, it will be found to provide in § 26 that "all matters of fact material to the determination of the cause, which, in the course of the proceedings shall be affirmed by the one party and denied by the other, shall be tried by a jury upon evidence given *viva voce* in the said court, and where witnesses are absent through sickness or other unavoidable cause, upon their depositions." 9 Hen. Stat. p. 394, ch. 15, § 26. The act of October 1783, after reciting that this mode of trial by jury upon *viva voce* testimony in the said court has been found to be expensive to the parties and inconvenient to witnesses, repealed so much of the said 26th section as directed such matters of fact to be tried by jury in said court upon *viva voce* testimony, and declared that the mode of trial in causes depending before the said court should be the same as was used and practised in the courts of chancery within the colony of Virginia under the former government. 11 Hen. Stat. p. 343, 4, ch. 26. The provision in the revised act of 1792 concerning the high court of chancery is, that "the said court in its discretion, may direct an issue to be tried, whenever it shall be judged necessary either in that court or in any other court whatsoever as justice or convenience to the parties may require, and in all other cases the mode of trial shall be the same as hath been heretofore used and practised in the courts of chancery in Virginia." 13 Hen. Stat. p. 413, ch. 12, § 13. There is a like provision in the act of 1819 concerning the superior courts of chancery. 1 R. C. p. 205, § 47. Mr. Jefferson supposing the words "if either party choose" to have been introduced, adds: "The consequence has been, that as no suitor will say to his judge, 'Sir, I distrust you, give me a jury,' juries are rarely, I might say, perhaps, never seen in that court, but when called for by the chancellor of his own accord." Juries, it is true, are rarely seen in the courts of chancery in Virginia, but this it is obvious does not arise from the cause assigned by Mr. Jefferson; his conclusion being arrived at upon a mistaken supposition.

As to the powers of the court directing an issue, and of the court in which it is tried, see 1 Wash. 158, 337; 1 Call 500; 2 Call 359; 5 Call 537; 1 H. & M. 548; 2 H. & M. 525; 6 Munf. 207.

cerning the legality of evidence and other matters of law which may arise.

1 R. C. p. 508,
§ 78.
1839, p. 43, ch. 66,
§ 3.
1 Rob. 591.

§ 6. At the next term after an order at the rules for an enquiry of damages, the same may be executed, and final judgment be rendered thereupon, unless good cause be shewn for a continuance. The court, if neither party require a jury, may ascertain the damages, and on what sum, and from what time, interest shall be computed, and give judgment for such damages and interest.

Amendments of pleadings at the trial.

9 Geo. iv. ch. 15.
3 & 4 Will. iv. ch.
42, § 23, 24.
3 Call 522.
4 Call 225.
5 Call 529.

§ 7. If at the trial of any action, there appears to be a variance between the evidence and the allegations or recitals, the court, if it consider the same not material to the merits of the case, and that the opposite party cannot have been prejudiced thereby, may allow the pleadings to be amended, on such terms as to payment of costs or postponement of the trial, or both, as it may deem reasonable. Or, instead of the pleadings being amended, the court may direct the jury to find the facts, and after such finding, if it consider the variance such as could not have prejudiced the opposite party, shall give judgment according to the right of the case.

Bill of exceptions ; argument of counsel ; non-suit.

1 R. C. p. 523,
ch. 139, § 1.

§ 8. In the trial of a case at law, in which an appeal, writ of error or *supersedeas* lies to a higher court, a party may except to any opinion of the court, and tender a bill of exceptions, which, (if the truth of the case be fairly stated therein,) the judge or justices, or the greater part of those present, shall sign ; and it shall be a part of the record of the case.

Id. p. 270, § 11.

§ 9. Not more than two counsel shall argue in a civil case, on the same side, unless by leave of the court.

Id. p. 510, § 95.

§ 10. A party shall not be allowed to suffer a non-suit, unless he do so before the jury retire from the bar.

Retirement of jury ; verdict ; and new trial.

Id. § 93.

§ 11. Papers read in evidence, though not under seal, may be carried from the bar by the jury.

1 R. C. p. 512,
§ 104.

§ 12. When there are several counts, one of which is faulty, the defendant may ask the court to instruct the jury to disregard it ; yet if entire damages be given, the verdict shall be good.

Id. p. 512, § 105.
1 Wash. 76.
2 Call 313.
2 Munf. 195.

§ 13. In *detinue*, if on an issue concerning several things, in one count, no verdict be found for part of them, it shall not be error, but the plaintiff shall be barred of his title to the things omitted ; and if the verdict omit price or value, the court may at any time have a jury empaneled to ascertain the same.

§ 14. The jury, in any action founded on contract, may allow interest on the principal due, or any part thereof, and fix the period at which such interest shall commence. And in any action for a cause arising hereafter, whether from contract or from *tort*, the jury may allow interest on the sum found by the verdict, or any part thereof, and fix the period at which the said interest shall commence. If a verdict be rendered hereafter which does not allow interest, the sum thereby found shall bear interest from its date, whether the cause of action arose heretofore, or shall arise hereafter, and judgment shall be entered accordingly.

1 R. C. p. 508,
§ 80.
3 and 4 Will. iv.
ch. 42, § 28, 29.
5 Leigh 598.
11 Leigh 600.

§ 15. In any civil case, the court before which a trial by jury is had, may grant a new trial, unless the trial be of an issue in a chancery case, or it be otherwise specially provided. A new trial may be granted, as well where the damages are too small as where they are excessive. Not more than two new trials shall be granted to the same party in the same cause.

1 R. C. p. 510,
§ 96, 97.
6 Munf. 271.
3 Rand. 52.
2 Va. Cas. 49.

Of judgments and decrees for money.

§ 16. When there is a recovery on a bond, conditioned for the payment of money, the judgment shall be for the penalty of the bond, to be discharged by the payment of the principal, and the interest due thereon.

1 R. C. p. 509,
§ 83.
1 Munf. 175.
6 Munf. 71.
Gilm. 214.

§ 17. In an action on an annuity bond, or a bond for money payable by instalments, where there are further payments of the annuity or further instalments to become due after the commencement of the action, or in any other action for a penalty for the non-performance of any condition, covenant, or agreement, the plaintiff may assign as many breaches as he thinks fit. If there be judgment for the plaintiff on a demurrer, or by confession, or by default or *nil dicit*, he may so assign after such judgment. The jury empaneled in any such action, shall ascertain the damages sustained, or the sum due, by reason of the breaches assigned; and judgment shall be entered for the penalty, to be discharged by the payment of what is so ascertained, and such further sums as may be afterwards assessed, or be found due upon a *scire facias*, assigning a further breach. Such *scire facias* may be sued out from time to time, by any person injured, against the defendant, or his personal representative; and for what may be assessed or found due upon the new breach or breaches assigned, execution may be awarded.

1 R. C. p. 509,
§ 82.
1 Wash. 91.
1 Call 335, 6.
3 Munf. 249.
4 Rand. 317.

§ 18. In any suit in equity, or in an action founded on contract, where no jury is empaneled, judgment or decree may be rendered for interest on the principal sum recovered, until such principal be paid; and where there is a jury which allows

1 R. C. p. 508,
§ 80; p. 208, § 58.

interest, the judgment shall in like manner be for such interest till payment.*

9 Geo. iv. ch. 14,
§ 1.
1838, p. 74, ch. 95,
§ 1; p. 75, ch. 96,
§ 2.

See ante, p. 653,
ch. 171, § 49.

2 Rand. 313, 446.
9 Leigh 30.
11 Leigh 606.

1 R. C. p. 494,
§ 25; p. 543, § 49.
1822-3, p. 29, ch.
28, § 4.
1825-6, p. 17, § 7.
1840-41, p. 41,
§ 16; p. 48, § 46.

§ 19. In an action, founded on contract, against two or more defendants, although the plaintiff may be barred as to one or more of them, yet he may have judgment against any other or others of the defendants, against whom he would have been entitled to recover if he had sued them only.

§ 20. A judgment or decree against any person, as the personal representative of a decedent, or committee of a convict or an insane person, for a debt due from such decedent, convict or insane person, may, without taking an account of the transactions of such representative or committee, be entered to be paid out of the personal estate of such decedent, convict or insane person, in, or which shall come to, the hands of the representative or committee to be administered. When the court enters of record, that if he had prudently discharged his duty, the suit or motion would not have been brought or made, the judgment or decree, so far as it is for costs, shall be entered, to be paid out of his own estate.

1833-4, p. 69,
ch. 46, § 2.
1835-6, p. 36, ch.
50, § 3, 10.

§ 21. Any court, after the fifteenth day of its term, may make a general order allowing executions to issue on judgments and decrees after ten days from their date, although the term at which they are rendered be not ended. For special cause it may, in any particular case, except the same from such order, or allow an execution thereon at an earlier period.

CHAPTER CLXXVIII.

OF DECREES OF SALE; ORDERS FOR EXECUTING DEEDS OR APPOINTING TRUSTEES; AND THE RESERVATION FOR INFANTS.

SEC.

1. Decree or order for sale; how it may be made. Of the commissioner; when he must give bond.
2. When sheriff or sergeant must execute decree or order for sale; liability of him and his sureties.
3. Commission for selling and collecting; limited as to amount; how apportioned, where one sells and another collects.
4. When commissioner may be appointed to execute deed or writing; effect of such execution.

SEC.

5. How trustee may be appointed in place of one who has died.
6. When trust is to be executed by personal representative of trustee.
7. Right of infant to shew cause against decree or order, within six months after attaining twenty-one.
8. Effect of reversal of decree or order of sale, upon a purchaser under it.

* See 2 Call 358, 415; 2 H. & M. 603; 3 H. & M. 89; 1 Munf. 557; 2 Munf. 505; 5 Munf. 492; 2 Rand. 401; 6 Rand. 465; 3 Leigh 241, 729; 4 Leigh 189, 561; 6 Leigh 38, 495; 10 Leigh 629; 11 Leigh 261. As to compound interest, see 4 Rand. 406.

Of decrees for selling property and collecting proceeds.

§ 1. A court, in a suit properly therein, may make a decree or order for the sale of property in any part of the state, and may direct the sale to be for cash, or on such credit and terms as it may deem best; and it may appoint a special commissioner to make such sale. No special commissioner appointed by a court, shall receive money under a decree or order, until he gives bond before the said court or its clerk.

1 R. C. p. 201, § 28; p. 204, § 41; p. 210, § 66. 1830-31, p. 68, § 75. 1848-9, p. 43, ch. 76. 6 Leigh 196, 585. 11 Leigh 83, 294, 583. 12 Leigh 379.

§ 2. Where no special commissioner is appointed for the purpose, a decree or order of any court for the sale of property, shall be executed by the sheriff or sergeant who attends such court, unless the place of sale be out of his county or corporation, in which case the sale shall be by the sheriff of the county wherein the place of sale is, or, if the place be in a corporation, by the sergeant thereof, or the sheriff of the county, including such corporation, as the court may direct. Any sheriff, sergeant, or other officer, receiving money under any order or decree, shall pay the same as the court may order; and if he fail so to do, he and the sureties in his official bond, shall be liable therefor.

1835-6, p. 34, ch. 45, § 2. 1848-9, p. 43, ch. 76.

§ 3. For the services of commissioners or officers under any decree or order for a sale, including the collection and paying over the proceeds, there shall not be allowed any greater commission than five *per centum* on the first three hundred dollars received by them, and two *per centum* on all above that. And if a sale be made by one commissioner or officer, and the proceeds be collected by another, the court under whose decree or order they acted, shall apportion the commission between them as may be just.

1830-31, p. 68, § 75. 1835-6, p. 34, ch. 45, § 1. 1839-40, p. 45, ch. 52, § 1.

Order appointing commissioner to execute deed or substituting trustee in place of one who has died; when trust may be executed by personal representative.

§ 4. A court of equity, in a suit in which it is proper to decree or order the execution of any deed or writing, may appoint a commissioner to execute the same; and the execution thereof shall be as valid to pass, release or extinguish the right, title and interest of the party on whose behalf it is executed, as if such party had been at the time capable in law of executing the same, and had executed it.

1 R. C. p. 204, § 41.

§ 5. In a suit in equity in which it appears that a trustee has died, although the heirs of such trustee be not parties to the suit, yet, if his personal representative and the other persons interested, be parties, the court may appoint another trustee in the place of him who has died, to act either alone or in conjunction with any surviving trustee, as the case may require.

2 H. and M. 11, 12. 4 Rand. 164.

§ 6. The personal representative of a sole or surviving trustee, shall execute the trust, or so much thereof as remained

11 Leigh 342.

unexecuted at the death of such trustee, (whether the trust subject be real or personal estate,) unless the instrument creating the trust otherwise direct, or some other trustee be appointed for the purpose, by a court of chancery having jurisdiction of the case.

Right of infants to shew cause against decree. Effect of reversal of decree, upon purchaser under it.

1 R. C. p 204,
§ 41.

4 H. and M. 376.
5 Call 459.
6 Rand. 594.
5 Leigh 119.
6 Leigh 196.
10 Leigh 406, 7.

§ 7. It shall not be necessary to insert in any decree or order a provision allowing an infant to shew cause against it within a certain time after he attains the age of twenty-one years. But in any case in which, but for this section, such provision would have been proper, the infant may, within six months after attaining the age of twenty-one years, shew such cause in like manner as if the decree or order contained such provision. This right of an infant shall not be affected by the fourth section.

1 Wash. 313
10 Leigh 317.
12 Leigh 379.

§ 8. If a sale of property be made under a decree or order of a court, after six months from the date thereof, and such sale be confirmed, though such decree or order be afterwards reversed or set aside, the title of the purchaser at such sale shall not be affected thereby; but there may be restitution of the proceeds of sale to those entitled.

CHAPTER CLXXIX.

OF INJUNCTIONS; APPOINTMENTS OF RECEIVERS; AND BILL OF REVIEW.

SEC.

1. Injunction to restrain sale of property exempt in case of husband or parent; or to protect plaintiff in suit for specific property.
2. Judgment or decree not necessary, before creditor brings suit to avoid transfer of or charge upon his debtor's estate; what relief he may have in such suit.
3. Equity of injunction bill to be shewn by affidavit or otherwise; when notice is necessary.
4. In what court injunction case proceeds.
5. Bill of review; within what time allowed; when injunction may be awarded on it.
6. General jurisdiction to award in-

SEC.

- junctions, in judges of circuit courts.
7. When circuit court or judge refuses, judge of court of appeals may award injunction.
8. Where injunction is to restrain removal of property out of state, how far power extends.
9. To what clerk judge's order for injunction is directed.
10. Injunction bond; when, how and before whom given. Endorsement as to it on *subpœna*.
11. If there be a forthcoming bond in the case, what redress surety therein has.
12. Order dissolving injunction.
13. Damages on dissolution.
14. Dismission of injunction bill.

When court to interfere; in what court injunction case proceeds.

1836-7, p. 46, ch.
69, § 5.
1825-6, p. 24, ch.
22, § 9.

§ 1. An injunction may be awarded to injoin the sale of property exempt in the case of a husband or parent, under

chapters forty-nine and one hundred and sixteen; or to protect any plaintiff in a suit for specific property pending either at law or in equity, against injury from the sale, removal or concealment of such property.

§ 2. A creditor, before obtaining a judgment or decree for his claim, may institute any suit to avoid a gift, conveyance, assignment or transfer of, or charge upon, the estate of his debtor, which he might institute after obtaining such judgment or decree; and he may in such suit have all the relief in respect to said estate which he would be entitled to after obtaining a judgment or decree for the claim which he may be entitled to recover.

§ 3. No injunction shall be awarded in vacation nor in court in a case not ready for hearing, unless the court or judge be satisfied by affidavit or otherwise of the plaintiff's equity; and any court or judge may require that reasonable notice shall be given to the adverse party, or his attorney at law or in fact, of the time and place of moving for it before the injunction is awarded, if in the opinion of the court or judge it be proper that such notice should be given.

§ 4. Jurisdiction of a bill for an injunction to any judgment, act or proceeding, shall be in a circuit, county or corporation court of a county or corporation in which the judgment is rendered, or the act or proceeding is to be done or is doing or apprehended, except that a county or corporation court shall not award an injunction to a judgment or proceeding of any other court.

Of bill of review.

§ 5. A court or judge allowing a bill of review, may award an injunction to the decree to be reviewed. But no bill of review shall be allowed to a final decree, unless it be exhibited within three years next after such decree; except that an infant, married woman or insane person may exhibit the same within three years after the removal of his or her disability.

General jurisdiction of judges to award injunctions.

§ 6. Every judge of a circuit court shall have a general jurisdiction in awarding injunctions, whether the judgment or proceeding enjoined be of a superior or inferior court, in or out of his circuit, or the party, against whose proceeding the injunction be asked, reside in or out of the same.

§ 7. When a circuit court, or a judge thereof, shall refuse to award an injunction, a copy of the proceedings in court, and the original papers presented to the judge in vacation, with his order of refusal, may be presented to a judge of the court of appeals, who may thereupon award the injunction.

Power to restrain removal of property out of state.

2 Munf. 162.

§ 8. A court or judge awarding an injunction to restrain the removal of property out of the state, may require bond to be given before such officer, and in such penalty as it may direct, conditioned to have the property forthcoming to abide the future order or decree of the court, and unless such bond be given, may order the officer serving its process to take possession of the property, and keep it until the bond be given, or until the further order of the court.

To what clerk judge's order for injunction is directed.

11.

§ 9. Every order (awarding an injunction) made under the sixth or seventh section, shall be directed to the clerk of such circuit court as has jurisdiction under the fourth section, and the proceedings thereupon shall be as if the order had been made by such court, or the judge thereof.

Injunction bond.

1 R. C. p. 218,
§ 113, 114; p. 260,
§ 75.
1842-3, p. 55, ch.
78, § 1, 2.
3 Munf. 230.
6 Munf. 36.
Gilm. 153.
2 Rand. 247.
7 Leigh 68.
8 Leigh 588.
2 Grat. 357.

§ 10. An injunction (except in the case of any personal representative or other person from whom, in the opinion of the court or judge awarding the same, it may be improper to require bond) shall not take effect until bond be given in such penalty as the court or judge awarding it may direct, with condition to pay the judgment or decree, (proceedings on which are enjoined,) and all such costs as may be awarded against the party obtaining the injunction and all such damages as shall be incurred in case the injunction be dissolved, and with a further condition, if a forthcoming bond has been given under said judgment or decree, to indemnify and save harmless the sureties in said forthcoming bond, and their representatives, against all loss or damage in consequence of said suretyship; or, if the injunction be not to proceedings on a judgment or decree, with such condition as the said court or judge may prescribe. The bond shall be given before the clerk of the court in which such judgment or decree was, and in other cases before the clerk of the court in which the suit is, wherein the injunction is awarded. If the bond be not given before the summons is issued, the clerk shall endorse thereon that the injunction is not to take effect until the bond is given; and the clerk who afterwards takes the bond, shall endorse that it is given.

1a.

§ 11. Any surety in such forthcoming bond, or his personal representative, may move for and obtain an order for other or additional security, in like manner as a defendant in the injunction may.

Order of dissolution; damages thereon.

§ 12. The judge of a circuit court in which a case is pending, wherein an injunction is awarded, may, in vacation, dis-

solve such injunction, after reasonable notice to the adverse party. His order for the dissolution shall be directed to the clerk of said court, who shall record the same in the order book.

§ 13. Where an injunction to stay proceedings on a judgment or decree for money, is dissolved wholly or in part, there shall be paid to the party having such judgment or decree, damages at the rate of ten *per centum* per annum from the time the injunction took effect until the dissolution, on such sum as appears to be due, including the costs; but the court wherein the injunction is, may direct that no such damages be paid, or such portion thereof as it may deem just. The clerk of any circuit court which, or the judge of which, makes an order dissolving an injunction to a judgment, shall certify to the clerk of the court wherein the judgment was, the order of dissolution, and also the time the injunction took effect, if that appear in his office. In a case wherein a forthcoming bond was forfeited, and no execution thereon, before the injunction took effect, a court awarding such execution shall include in its judgment or decree damages as aforesaid; in other cases they shall be included in the execution on the judgment or decree to which the injunction was awarded. The damages shall be in satisfaction of so much of the interest for the time they are given as may not exceed said damages.

1 R. C. p. 209,
§ 61.
1830-31, p. 56, ch.
11, § 43.
4 Leigh 633.
6 Leigh 581.
1 Rob. 63.
5 Grat. 193.

2 Call 213.

Dismission of injunction bill.

§ 14. Where an injunction is wholly dissolved, the bill shall stand dismissed of course with costs, unless sufficient cause be shewn against such dismissal, when the case is in a circuit court, at the next term, and when it is in an inferior court, at or before the second term after the dissolution, whether monthly or quarterly. The clerks of said courts shall enter such dismissal on the last day of said terms.

1 R. C. p. 208,
§ 60.
1830-31, p. 56, ch.
11, § 42.
3 Munf. 88, 112.
4 Munf. 490.
6 Munf. 397.
5 Leigh 324.

CHAPTER CLXXX.

OF THE LOSS OF A RECORD OR PAPER IN A CAUSE.

§ 1. If in any cause, the original papers therein, or any of them, or the record for or in an appellate court, or any paper filed or connected with such record, be lost or destroyed, the court wherein the case is, or in which it would or ought to be, but for such loss or destruction, may docket the same; and on affidavit of such loss or destruction the case may be proceeded in, heard and determined, upon an authenticated copy of what is lost or destroyed, or proof of the contents thereof.

1841-2, p. 57, § 2.

The court may in its discretion, require new pleadings to be made up in whole or in part. A plaintiff, instead of proceeding under this section, may commence and prosecute a new suit for the same matter.

CHAPTER CLXXXI.

OF ERRORS INSUFFICIENT IN AN APPELLATE COURT.

SEC.

1. Errors which might be corrected on writ of error *coram nobis*, may be corrected on motion after notice.
2. Judgment on confession, a release of errors.
3. } For what a judgment or decree
4. } shall not be reversed.
5. Error in judgment or decree may be corrected in same court,

SEC.

when by default; and in other cases by same court or judge, when there is something by which to amend; or excess may be released.

6. What appellate court is to do in a case in which there might be redress under preceding section.

1 R. C. p. 222,
§ 5.
1819-20, p. 126,
ch 97, § 1.

1 Wash. 130.
1 H. & M. 25, 204.
2 H. & M. 467.
4 Munf. 377.
3 Rand. 104.
4 Rand. 161.
5 Rand. 326.
4 Leigh 308, 322.
7 Leigh 267.

1 R. C. p. 512,
§ 106.

Id. p. 511, § 103.
1838, p. 74, ch.
96, § 1.
1839, p. 42, ch.
66, § 2.

1 Wash. 155, 363.
2 Wash. 187, 203.
1 Call 83, 250.
5 Call 531.
6 Call, 12, 85.
2 H. & M. 595.
3 H. & M. 127,
271.
3 Munf. 314.
4 Munf. 430.
6 Munf. 486.
2 Rand. 440, 446.
3 Rand. 94, 448,
458.
4 Rand. 152, 488.
6 Rand. 182.
4 Leigh 412.
5 Leigh 268.
6 Leigh 320.
7 Leigh 68.
9 Leigh 422.
11 Leigh 600.
12 Leigh 84, 204.

§ 1. For any clerical error, or error in fact for which a judgment or decree may be reversed or corrected on writ of error *coram nobis*, the same may be reversed or corrected, on motion after reasonable notice, by the court, or if the judgment or decree be in a circuit court, by the judge thereof in vacation.

§ 2. A judgment on confession shall be equal to a release of errors.*

§ 3. No judgment or decree shall be stayed or reversed for the appearance of either party, being under the age of twenty-one years, by attorney, if the verdict, (where there is one,) or the judgment or decree, be for him and not to his prejudice; or for want of warrant of attorney; or for the want of a *similiter*, or any misjoining of issue; or for any informality in the entry of the judgment or decree by the clerk, or for the omission of the name of any juror, or because it may not appear that the verdict was rendered by the number of jurors required by law, or for any defect, imperfection, or omission in the pleadings, which could not be regarded on demurrer, or for any other defect, imperfection or omission, which might have been taken advantage of on a demurrer, or answer,† but was not so taken advantage of.

§ 4. No decree shall be reversed for want of a replication to the answer, where the defendant has taken depositions as if there had been a replication; nor shall a decree be reversed at the instance of a party who has taken depositions,

* See Call 558; 1 H. & M. 342; 2 H. & M. 575; 3 Munf. 167; 1 Rand. 44; 3 Rand. 160; 3 Leigh 681.

† For the rule heretofore when it was objected on an appeal from a decree, that equity had no jurisdiction, see the cases cited in the margin of § 19 of ch. 171, *ante*, p. 648.

for an informality in the proceedings, when it appears that there was a full and fair hearing upon the merits, and that substantial justice has been done. 1827-8, p. 20, ch. 25, § 1.
5 Leigh 192.

§ 5. The court in which there is a judgment by default, or a decree on a bill taken for confessed, or the judge of said court in the vacation thereof, may, on motion, reverse such judgment or decree for any error for which an appellate court might reverse it, if the following section was not enacted, and give such judgment or decree as ought to be given. And the court in which is rendered a judgment or decree, in a cause wherein there is in a declaration or pleading, or in the record of the judgment or decree, any mistake, miscalculation or misrecital of any name, sum, quantity or time, when the same is right in any part of the record or proceedings, or when there is any verdict, report of a commissioner, bond or other writing, whereby such judgment or decree may be safely amended; or in which a judgment is rendered on a forthcoming bond for a sum larger than by the execution or warrant of distress appears to be proper, or on a verdict in an action for more damages than are mentioned in the declaration; or in the vacation of the court in which any such judgment or decree is rendered, the judge thereof may, on the motion of any party, amend such judgment or decree according to the truth and justice of the case; or in any such case the party obtaining such judgment or decree may, in the same court, at any future term, by an entry of record, or in the vacation by a writing signed by him, attested by the clerk, and filed among the papers of the cause, release a part of the amount of his judgment or decree; and such release shall have the effect of an amendment, and make the judgment or decree operate only for what is not released. Every motion under this chapter shall be after reasonable notice to the opposite party, his agent or attorney, in fact or at law, and shall be within five years from the date of the judgment or decree. 1 R. C. p. 511, § 103; p. 512, § 108, 9, 10.
1838, p. 74, ch. 96, § 1, 2.
6 Munf. 267.
2 Rand. 174.
4 Rand. 152, 413.
6 Rand. 101, 551.
3 Leigh 270.
2 Grat. 354.

5 Rand. 546.
5 Grat. 137.

1 Call 41, 47.
4 Munf. 371.

§ 6. No appeal, writ of error or *supersedeas*, shall be allowed by an appellate court or judge for any matter for which a judgment or decree is liable to be reversed or amended, on motion as aforesaid, by the court which rendered it, or the judge thereof, until such motion be made and overruled in whole or in part. And when an appellate court hears a case wherein an appeal, writ of error or *supersedeas* has been allowed, if it appear that, either before or since the same was allowed, the judgment or decree has been so amended, the appellate court shall affirm the judgment or decree, unless there be other error; and if it appear that the amendment ought to be, and has not been made, the appellate court may make such amendment, and affirm in like manner the judgment or decree, unless there be other error. 1 Rand. 25.
9 Leigh 484.
11 Leigh 600.
1 Rob. 287.
5 Grat. 384.

CHAPTER CLXXXII.

OF APPEALS AND WRITS OF ERROR AND SUPERSEDEAS.

SEC.

1. In what cases a person may appeal of right from county or corporation court to circuit court.
2. } In what cases petition for appeal,
3. } writ of error or *supersedeas* may be presented; when prohibited.
4. How person desiring to present such petition may procure suspension of execution.
5. } Record exhibited with petition;
6. } how it is made up.
7. When case comes to appellate court or judge a second time, former record may be inspected; power to award a *certiorari*.
8. How petition is prepared and certified.
9. To what court or judge petition is presented.
10. When petition to be rejected; when order of rejection is final; when petition may be presented to judge of court of appeals.
11. Where petition is allowed; when *supersedeas* is awarded.
12. In what court appeal, writ of error or *supersedeas* is docketed; what process issues.
13. } Bond of appellants or petitioners;
14. } by whom taken; endorsement on process as to bond.
15. How surety in such bond may obtain indemnity.
16. Where appeal of right, when record to be delivered to clerk of circuit court; if not delivered, how appeal is dismissed.

SEC.

17. If record be delivered five years after final judgment or decree, no process to issue, but the case to be dismissed; so also if bond be not given in five years.
18. After dismissal, no other appeal, writ of error, or *supersedeas* allowed in the case.
19. In case to be heard by court of appeals, how clerk thereof prepares record; what is printed, and how; how printed copies are distributed, and cost of printing paid.
20. Docket of cases to be heard; how made out; publication by clerk at *Lewisburg*; cases to be heard in order.
21. What cases may be heard out of turn.
22. In what cases appellate court may hear parol testimony.
23. Decision of appellate court.
24. What damages are awarded to appellee.
25. When circuit court reversing judgment or decree may retain the cause.
26. } When clerk of court of appeals shall transmit its decision; penalty on him for failure; postage to be paid by him and re-paid out of treasury.
27. }
28. How decision of court of appeals is entered in court from which case came; execution and other proceedings.

In what cases appeal may be entered or petition presented.

1 R. C. p. 194, § 18.
1830-31, p. 50, 53, ch. 11, § 30, 31.
1 H. and M. 404.
2 H. and M. 467.
3 H. and M. 245.
4 Munf. 403.
2 Rand. 174.
1 Rob. 263.
3 Grat. 326, 328, 448.

1 R. C. p. 192, § 11, 12; p. 205, § 44; p. 206, § 50 to 52, 54, 55; p. 208, § 57; p. 231, § 14.
1830-31, p. 51, 53, ch. 11, § 30, 31.
1848-9, p. 42, ch. 75; p. 239, § 55 to 58; p. 259, § 72.
3 Call 284.
6 Munf. 452.
3 Leigh 609.
2 Rob. 500, 582.

§ 1. Any person who thinks himself aggrieved by an order in a controversy concerning the probat of a will, or the appointment or qualification of a personal representative, guardian or committee, or concerning a mill, county road, or ferry, may, in a county or corporation court, during the term at which such order is made, appeal therefrom, of right, on giving bond as hereinafter mentioned.

§ 2. A person who is a party to any such controversy, or to any case in chancery, wherein there is a decree or order, dissolving an injunction, or requiring money to be paid, or the possession or title of property to be changed, or adjudicating the principles of the cause, or to any civil case, wherein there is a final judgment, decree or order, may present a petition, if the case be in chancery, for an appeal from the decree or order, and if not in chancery, for a writ of error or *supersedeas* to the judgment or order, except as follows:

§ 3. No such petition shall be presented for an appeal from, or writ of error or *supersedeas* to, a judgment of a county or corporation court, when it is rendered on an appeal from a judgment of a justice;* nor to a judgment, decree or order of any other court, when the matter in controversy is merely pecuniary, and not of greater amount than two hundred dollars, exclusive of costs;† nor to any final‡ judgment, decree or order, whether the commonwealth be a party or not,§ which shall have been rendered more than five years before the petition is presented.||

1 R. C. p. 190, § 2; p. 206, § 51.
1848-9, p. 42, ch. 75.
See ante, p. 599, ch. 150, § 17.

Ante, p. 225, ch. 42, § 23.

How execution may be suspended.

§ 4. At the instance of any person who desires to present such petition, the court in which the judgment, decree or order is, may, during the term at which it is rendered or made, or if it be in a circuit court, any circuit judge may, within sixty days after such term is ended, make an order suspending the execution of such judgment, decree or order, (for a reasonable time, to be specified in such order,) when such person shall give bond before the clerk of said court in such penalty as the court or judge may require, with a condition reciting such judgment, decree or order, and the intention of said person to present such petition, and providing for the payment of all such damages as any person may sustain by reason of the said suspension, in case a *supersedeas* to such judgment, decree or order, should not be allowed, and be effectual within the time so specified.

1827-8, p. 21, ch. 25, § 4.
1831-2, p. 41, ch. 49.

How the record is made up.

§ 5. With such petition there shall be a transcript of the record of so much of the case wherein the judgment, decree or order is, as will enable the court or judge to whom the petition is to be presented, properly to decide on such petition, and enable the court, if the petition be granted, properly to decide the questions that may arise before it. The person intending to petition shall notify the opposite party or his counsel of his intention; and so much of the record shall be copied as any party may desire, except as follows:

1845-6, p. 56, ch. 69.
3 Call 231.
6 Call 78.
2 Munf. 266.
1 Rand. 1.
4 Rand. 189, 413.
3 Leigh 78.

§ 6. Unless the person so intending to petition direct otherwise, there shall not in a chancery case be copied, of the process, orders at rules, or returns or evidences of service thereof, any but such as are necessary to shew that the cause was

1825-6, p. 17, ch. 15, § 11.
1827-8, p. 21, ch. 26, § 2.
1845-6, p. 56, ch. 69.
6 Leigh 504.

* See 2 Leigh 707.

† 2 Call 497; 2 Munf. 151; id. 541, 2; 3 Munf. 136; id. 202; 5 Munf. 276; 6 Munf. 541; 3 Rand. 448; 6 Rand. 22; 7 Leigh 331.

‡ As to final judgment, 2 Munf. 336; 3 Munf. 458; 4 Munf. 383; 6 Rand. 349; 8 Leigh 88. As to final decree, 6 Munf. 328; 1 Rand. 415; id. 421; 4 Leigh 163; id. 209; 6 Leigh 196; 1 Rob. 20; 3 Grat. 148.

§ 1 Call 168; 1 Grat. 294.

|| 3 Call 192; 6 Leigh 77; id. 299; 4 Grat. 180.

regularly matured for hearing; nor, of the commissions and notices to take depositions, captions to such depositions, and certificates of their having been sworn to, any more than is necessary to the decision of exceptions taken to the reading of the depositions; but the name of each witness, and the day of taking his deposition, shall be stated at the head thereof. If more than one copy of the same paper be filed in the case, only one copy of it shall be inserted. There shall not be copied an account reported by a commissioner, to which there is no exception, nor any printed document, of which either party will furnish to the clerk a copy, but such duplicate shall be attached to what is copied; and when a case has before been in the appellate court, there shall only be copied the proceedings subsequent to the former appeal, writ of error or *supersedeas*.

1825-6, p. 17, ch.
15, § 11.
1827-8, p. 21, ch.
26, § 2.
1845-6, p. 56, ch.
69.
6 Leigh 504.

§ 7. The appellate court, or a judge thereof, may, when a case has before been in such court, inspect the record upon the former appeal, writ of error or *supersedeas*. And such court may, in any case, award a writ of *certiorari* to the clerk of the court below, and have brought before it, when part of a record is omitted, the whole or any part of such record.

How petition is prepared and certified; to whom presented and how acted on.

1830-31, p. 52; p.
239, § 56.

§ 8. A petition for an appeal, writ of error or *supersedeas*, shall assign errors; and it shall not be presented until some counsel or attorney of the appellate court shall certify that in his opinion it is proper that the decision should be reviewed by such court.

1830-31, p. 50, 51,
53, § 30, 31.

§ 9. The petition may be presented to the court wherein the case is to be docketed, if the appeal, writ of error or *supersedeas* be allowed, or to a judge thereof; or if the judgment, decree or order be of a county or corporation court, to any circuit judge.

1 R. C. p. 207,
§ 53; p. 492, § 19.
1830-31, p. 52, 3.
1840-41, p. 75, ch.
64.

§ 10. The petition shall be rejected, when it is for an appeal from an interlocutory decree or order, in a case which the court or judge to whom it is presented deems it most proper should be proceeded in farther in the court below, before an appeal is allowed therein. In a case wherein the court or judge, to whom a petition is duly presented, shall deem the judgment, decree or order plainly right, and reject it on this ground, if the order of rejection so state, and the rejection be by the court in term, no other petition shall afterwards be presented to the same purpose, except that when the rejection is by a circuit court or circuit judge, the petition (or a copy thereof,) and the order of rejection, with the transcript of the record, may be presented to a judge of the court of appeals.

2 Call 276.
1 H. & M. 562.

1 R. C. p. 205,
§ 44.
1830-31, p. 50,
§ 30; p. 54, § 31.
1844-5, p. 50, ch.
47, § 1.

§ 11. Any court or judge to whom a petition is duly presented, if of opinion that the decision complained of ought to be reviewed, may allow an appeal, writ of error or *supersedeas*,

and in a case of appeal, (as well as of a *supersedeas*,) may award a *supersedeas* to stay proceedings, either in whole or in part.

¹ Wash. 118.
³ Leigh 609.
¹⁰ Leigh 490.

In what court appeal, writ of error or supersedeas, is heard.

§ 12. Every appeal, writ of error or *supersedeas*, shall, when it is to or from a judgment, decree or order, of the court of any county or corporation, be docketed in the circuit court which has jurisdiction over such county or corporation; and when it is to or from a judgment, decree or order, of any other court, be docketed in the court of appeals. The clerk of the court wherein it is docketed shall, in a case in which it is allowed on petition, issue a summons against the parties interested other than the petitioners, that they may be heard, and also issue any *supersedeas* which may be awarded.

¹ R. C. p. 206,
§ 52.
1830-31, p. 50, 53,
ch. 11, § 30, 31.
¹ H. and M. 21.

Bond of appellants or petitioners.

§ 13. Except where an appeal, writ of error or *supersedeas*, is proper to protect the estate of a decedent, convict or insane person, the same shall not take effect until bond is given by the appellants or petitioners, or one of them, or some other person, in a penalty to be fixed by the court or judge by or in which the appeal, writ of error or *supersedeas*, is allowed or entered, with condition, if a *supersedeas* be awarded, to perform and satisfy the judgment, decree or order, or the part thereof proceedings on which are stayed, in case the said judgment, decree or order, or such part, be affirmed, or the appeal, writ of error or *supersedeas*, be dismissed; and also to pay all damages, costs and fees, which may be awarded against or incurred by the appellants or petitioners, and if it be an appeal from an order or decree dissolving an injunction or dismissing a bill of injunction, with a further condition to indemnify and save harmless the surety in the injunction bond against all loss or damage in consequence of his suretyship; and with condition, when no *supersedeas* is awarded, to pay such specific damages and such costs and fees, as may be so awarded or incurred.

¹ R. C. p. 194,
§ 19; p. 206, § 50;
p. 207, § 52; p.
239, 40, § 59; p.
260 § 73.
1824-5, p. 20, ch.
21.
1827-8, p. 21, ch.
25, § 3.
1843-4, p. 46, ch.
54, § 3.
1844-5, p. 50, ch.
47.
See ante, p. 88,
ch. 3, § 7.
2 Call 286.
1 H. and M. 15,
26.
2 Munf. 341.
1 Rand. 393, 463.
3 Rand. 1, 479.
4 Rand. 384, 564.
5 Rand. 332.
3 Leigh 196.
5 Leigh 80.
6 Leigh 299, 378.
7 Leigh 221.
10 Leigh 394.
4 Grat. 180.

§ 14. Such bond shall be taken by the clerk of the court in which an appeal is entered of right, before such entry, or where an appeal, writ of error or *supersedeas*, is allowed on petition, by the clerk of the appellate court, before process is issued thereupon, except where the court of appeals is the appellate court, the clerk whereof shall endorse on the summons or *supersedeas*, that it is not to be effectual until such bond be given before the clerk of the court below, who shall take said bond and endorse on the same process that it has been given, and the names of the sureties therein.

1830-31, p. 80, ch.
22.

§ 15. On the motion of any surety in such bond, after reasonable notice to, or a rule against his principal, the appellate

1843-4, p. 47, ch.
54, § 6.

court may order bond to be given, in such time as it may prescribe, with sufficient security to indemnify and save harmless such surety against all loss or damage in consequence of his suretyship, and if such order be not complied with, may order the appeal, writ of error or *supersedeas*, to be dismissed.

Dismission where record is not filed in time.

1 R. C. p. 193,
§ 13; p. 212, § 76;
p. 240, § 63.
1830-31, p. 59
§ 53.

§ 16. In a case in which there is an appeal of right, the clerk of the court from whose order such appeal is taken, shall deliver a copy of the record to the clerk of the circuit court as soon as practicable, unless the appellant direct him not to deliver it; in which case, he shall deliver to the clerk of said circuit court a copy of the entry of the appeal, and a certificate of such direction. On the production of such copy and certificate, the circuit court shall enter a dismissal of the appeal.

1830-31, p. 59,
§ 53.

6 Leigh 77, 299.
4 Grat. 180.

§ 17. No process shall issue upon any appeal, writ of error or *supersedeas* allowed to or from a final judgment, decree or order, if, when the record is delivered to the clerk of the appellate court, there shall have elapsed five years since the date of such final judgment, decree or order; but the appeal, writ of error or *supersedeas* shall be dismissed whenever it appears that five years have elapsed since the said date before the record is delivered to such clerk, or before such bond is given as is required to be given before the appeal, writ of error or *supersedeas* takes effect.

1 R. C. p. 194,
§ 20.
1830-31, p. 59,
§ 53.

§ 18. After the dismissal of an appeal, writ of error or *supersedeas*, no other appeal, writ of error or *supersedeas* shall be allowed to or from the same judgment, decree or order.

Records printed in, and docket of, cases to be heard.

1841-2, p. 50, ch.
87, § 1.

§ 19. In every case to be heard by the court of appeals, the clerk thereof shall make a table of contents to the whole record. Of the petition, so much of the record as the counsel for any party interested, or the court, may direct, and the table of contents, the clerk shall cause eleven copies to be printed, preserving in the margin of the printed record the paging of the record from the court below, which shall be used in printing and returned to the clerk's office. The clerk shall see that the printing is properly done. Of the copies printed, one shall be delivered to each judge, one to the reporter, and two to the counsel on each side, and the other shall be retained by the clerk. The cost of the printing, after being allowed by the court, shall be paid out of the treasury.

1 R. C. p. 192,
§ 10; p. 205, § 44.
1826-7, p. 17, ch.
18.
1830-31, p. 54, ch.
32.

§ 20. Annually before the court of appeals commences its session at *Richmond*, in October, and at *Lewisburg* in July, the clerk at each place shall make out a docket of the causes there ready for hearing. Those at *Richmond* shall be numbered by figures and shall be docketed in the order in which

the records were received, and be heard in the same order. Those at *Lewisburg*, from each circuit, shall be arranged together in like order; the circuits shall be arranged in such order as the court may designate; and to each circuit the clerk shall assign a reasonable portion of the term. One month before the term is to commence, the clerk shall publish in a newspaper the order in which the circuits are arranged and the days assigned to each circuit. The court shall hear the causes in that order; except that, when the cases from any circuit are not all heard on the days assigned to it, they shall not be heard on days assigned to another circuit, when it will interfere with causes therefrom, but may be heard when there will be no such interference.

§ 21. The court may hear out of turn cases concerning the probat of a will, or the appointment or qualification of a personal representative, guardian or committee, or concerning a mill or county road, and any others which it may see good cause for so hearing.

Hearing and decision in appellate court.

§ 22. On an appeal from an order of a county or corporation court, in a controversy concerning the probat of a will, or the appointment or qualification of a personal representative, guardian or committee, or concerning a mill, county road or ferry, witnesses may be examined in the circuit court; but in no case shall the court of appeals hear parol testimony.

§ 23. The appellate court shall affirm the judgment, decree, or order, if there be no error therein, and reverse the same in whole or in part, if erroneous, and enter such judgment, decree or order as the court, whose error is sought to be corrected, ought to have entered; affirming in those cases where the voices on both sides are equal.*

§ 24. Where any judgment, decree or order is affirmed, damages shall be awarded to the appellee. Such damages, when the judgment, decree or order is for the payment of money, shall be at the rate of six *per centum* per annum on the whole amount of the recovery, (including interest and costs,) from the time the appeal, writ of error, or *supersedeas* took effect, until the affirmance, or if the affirmance be by the court of appeals, until a copy of its decision is entered in the order book of the court below; which damages shall be in satisfaction of all interest during that time. When the judgment, decree or order is not for the payment of any money except costs, the damages shall be such specific sum as the appellate court may deem reasonable, not being more than one hundred dollars, nor, in the court of appeals, less than thirty dollars.

* See 3 Call 107; 6 Call 16; 4 H. & M. 200; 1 Munf. 460; 4 Munf. 60; 3 Rand. 34; 4 Rand. 386; 3 Leigh 407; 10 Leigh 93, 228; 11 Leigh 137, 309; 2 Rob. 492; 5 Grat. 28, 259, 346.

1841-2, p. 51, ch. 88, § 4.
1843-4, p. 46, ch. 53.
1844-5, p. 51, ch. 47, § 2.
1847-8, p. 54, ch. 70, § 4.

1 R. C. p. 194, § 18.
2 Wash. 162.
4 Munf. 403.
1 Rand. 464.

1 R. C. p. 194, § 21; p. 240, § 60.

1 R. C. p. 208, § 59; p. 240, § 61, 64.
1830-31, p. 54, § 32.
2 Call 208.
4 Grat. 1.

1 R. C. p. 207, 8,
§ 56.

§ 25. When any judgment, decree or order of a county or corporation court is reversed or affirmed, the cause shall not be remanded to said court for further proceedings, but shall be retained in the circuit court, and there proceeded in, unless by consent of the parties, or for good cause shown, the appellate court direct otherwise.

1 R. C. p. 193,
§ 14; p. 240, § 64.
1843-4, p. 46, ch.
54, § 3.

1 Wash. 75.
6 Leigh 400.
11 Leigh 584.

§ 26. When any term of the court of appeals is ended, or sooner if the court so direct, the clerk thereof shall certify, and, by mail or otherwise, transmit its decisions to the clerk of the court below, except that it shall not be his duty to certify or transmit a copy of a decree or judgment of affirmance, unless the appellee or defendant in error shall have paid all fees due from him in the case, or shall endorse on such copy so much of the decree or judgment for the benefit of the clerk, as the unpaid fee shall amount to. If any clerk shall fail to comply with this section for twenty days, except as aforesaid, he shall forfeit fifty dollars to any person aggrieved thereby.

1 R. C. p. 193,
§ 14.

§ 27. On all decisions so transmitted by mail, the clerk shall pay the postage. His accounts for such postage, verified by oath, may from time to time, at intervals not exceeding eighteen months, be certified by the court of appeals to the first auditor for payment out of the treasury.

1 R. C. p. 195,
§ 21.
1830-31, p. 60,
§ 54.

2 Call 376.
5 Call 175.
4 H. and M. 200.
3 Munf. 227.
6 Munf. 580.
4 Leigh 145.

§ 28. The court from which any case may have come to the court of appeals shall enter the decision of the court of appeals as its own, and execution may issue thereupon accordingly. If such decision be received by the clerk of the court below in vacation, he shall enter it of record in his order book, and thereupon such execution may issue and such proceedings be had in the case, as would have been proper, if the decision had been entered in court.*

CHAPTER CLXXXIII.

GENERAL PROVISIONS AS TO CIVIL CASES.

SEC.

1. Matters under this title, rules for all courts.
2. How jurisdiction is determined, where proceeding is on a penal bond.
3. Who may execute bond for obtaining a writ or order.

SEC.

4. How proceedings may be in cases pending when this act commences, or in action of replevin brought after.
5. Proceedings in case wherein bail given before this act commences.

* Subsequent to the decision in *Alderson vs. Biggers' adm'r.*, 4 Munf. 528, the act of 1830-31, p. 102, ch. 34, was passed, providing for the recovery of hires of slaves accrued pending appeals, writs of error or *supersedeas*; it was intended by the revisors to revise that act, and either make it the last section of this chapter, or, if the provision was extended to hires pending injunctions, to introduce it in the next chapter; but it was casually omitted; it is deemed proper that the omission should be supplied by the legislature.

§ 1. All things contained in any chapter under this title, ^{1 R. C. p. 513, § 111.} not restricted by their nature, or by express provision to a particular court, shall be the rules of decision and proceeding in all courts within this state.

§ 2. Where the proceeding before a court or justice is on a penal bond, with condition for the payment of money, the jurisdiction shall be determined as if the undertaking to pay such money had been without a penalty. And where jurisdiction depends on the amount of a judgment, if it be on such a bond, the jurisdiction shall be determined by the sum, payment whereof will discharge the judgment. ^{1 Munf. 515. 2 Va. Cas. 215.}

§ 3. A bond for obtaining any writ or order in term time or vacation, may be executed by any one person with sufficient surety, though it be in a case no party to which is an obligor. ^{1 R. C. p. 240, § 59.}

§ 4. In any case pending at the time of the commencement of this act, or in any action of replevin brought after, for a cause which arose before such commencement, the proceedings, so far as it may not be practicable for them to conform to other sections of this act, may be according to the laws in force on the day before such commencement. ^{See ante, p. 101, 2, ch. 16, § 18; and post. ch. 216, § 2.}

§ 5. Any suit wherein bail shall have been required, and not given, before the commencement of this act, may be proceeded in as if the same had not been required. And in any suit wherein bail shall have been given before the commencement of this act, the plaintiff may proceed against the bail, and the bail may be discharged, according to the laws in force before such commencement: but no principal surrendered in a pending suit by such bail shall be committed to jail because of such surrender.

Title 52.

FEES AND COSTS.

CHAP. 184. Of the fees of officers.

185. Of costs generally.

CHAPTER CLXXXIV.

OF THE FEES OF OFFICERS.

SEC.

1. Fees of secretary and clerk of house of delegates.
2. Of surveyors.
3. When surveying is done at different places on same tour, how mileage is apportioned.
4. Fees of notary public.

SEC.

5. Of commissioner in chancery.
6. Commissioner to make affidavit of the time he was employed; right to require payment of fees, or security therefor, before making out or returning a report.

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| <p>SEC.</p> <p>7. Notary or commissioner to state on affidavit, deposition or report, fee therefor, and to whom charged.</p> <p>8. Fees of clerk of county or corporation court.</p> <p>9. Fees of clerk of circuit court.</p> <p>10. Fees of clerks of court of appeals and general court; at what rate records in court of appeals (printed) are charged.</p> <p>11. Fees of sheriff, sergeant or crier.</p> <p>12. Fees of a coroner or constable.</p> <p>13. To whom fees are charged.</p> <p>14. For what services clerk is not to charge.</p> <p>15. What not to be charged for by sheriff or sergeant.</p> <p>16. Services rendered in commonwealth's cases not paid for out of treasury, except in particular cases.</p> <p>17. Fee books; by what officers kept; what entered therein; submitted to inspection of commissioners.</p> <p>18. Fee bills; how and when made out; to be produced before payment is compelled; penalties for illegal demands; how fee bill may be quashed.</p> <p>19. } By whom and how bills are made out for fees due a deceased clerk;</p> <p>20. } to whom delivered; how service in making them out is paid for.</p> | <p>SEC.</p> <p>21. When and to whom fee bills are delivered for collection; power and duty of collecting officer.</p> <p>22. When and how collecting officer accounts for fee bills collected and returns those uncollected; remedy for what officer is chargeable with.</p> <p>23. Within what time fee bills may be collected.</p> <p>24. Officer or witness to whom for fees or attendance there is due any thing that is taxed in costs; right to payment out of the costs.</p> <p>25. When officer is entitled before performing services to have security for his fees.</p> <p>26. Annual account of clerks of court of appeals of money received for printed records; how much they are to pay into the treasury, and when.</p> <p>27. Payments out of the treasury.</p> <p>28. To clerk of county or corporation court.</p> <p>29. To clerk of circuit court.</p> <p>30. } To sheriff or other officer.</p> <p>31. }</p> <p>32. To a constable.</p> <p>33. To a sheriff or sergeant.</p> <p>34. }</p> <p>35. } To a jailor.</p> <p>36. Payments to officers by county or corporation.</p> |
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Secretary and clerk of house of delegates.

1 R. C. p. 303, ch
15, § 1.

§ 1. The secretary of the commonwealth may charge for a testimonial one dollar and fifty cents; and the clerk of the house of delegates for a copy of an act of assembly, if in one sheet, one dollar, and for each sheet after the first, seventy-five cents. These fees shall be paid by the person for whom the service is rendered, at the time it is done.

1d.

§ 2. Each of the officers hereinafter mentioned, may, for services performed by him by virtue of his office, charge the following fees, to wit:

A surveyor.

For all surveying actually done, for the first one hundred poles, or any less distance, long measure, per pole, - - - - -	\$ 1
For the first 100 poles, long measure, per pole, - - - - -	0½
For calculating the quantity of less than six courses or lines, - - - - -	50
When land is divided, for calculating each division of less than six courses, - - - - -	50
For every course or line more than six, - - - - -	3
For making a plat of six courses, or less, - - - - -	50
For every course more than six, - - - - -	3

For recording a plat and certificate, if not more than six courses, - - - - -	50
For every course above six, - - - - -	3
For a copy of a plat and certificate, where there are not more than six courses, - - - - -	50
For every course above six, - - - - -	3
For making an entry, - - - - -	50
For a copy of an entry, - - - - -	17
For every search, where no copy is required, - - - - -	12½
For giving a receipt for a warrant or any other paper, - - - - -	17
For travelling to the place of surveying, and returning, per mile, - - - - -	5

§ 3. If surveying be done at different places, on the same tour, the mileage shall be apportioned among the different surveys according to their distance from the residence of the surveyor or deputy and each other, so that the surveyor shall not receive more than five cents a mile for going and returning for any one trip. 1 R. C. p. 304, 5.

§ 4. *A notary public.*

Where there is a protest by him, for the record thereof, making out instrument of protest under his official seal, and notice of dishonour to one person besides the maker of a note or acceptor of a bill, - - - - -	\$ 1 00
For every additional notice, - - - - -	10
For taking and certifying the acknowledgment of any deed or writing; or taking and certifying the privy examination and acknowledgment of a married woman, - - - - -	50
For administering and certifying an oath, unless it be the affidavit of a witness, - - - - -	25
For taking and certifying affidavits or depositions of witnesses where done in an hour, - - - - -	75
If not done in an hour, for any additional time, at the rate per hour of - - - - -	75
For other services the same fee as the clerk of a county or corporation court for like services.	

Id. p. 317, § 13;
p. 522, ch. 132.
1822-3, p. 40, ch. 39.
1839, p. 41, ch. 63, § 4.
1839-40, p. 44, ch. 51.

§ 5. *A commissioner in chancery.*

For services which might be performed by notaries, the like fees for like services. 1 R. C. p. 200, § 22, p. 201, § 26; p. 317, § 14.

For any other service such fees as the court by which the commissioner is appointed may from time to time prescribe, not exceeding seventy-five cents, where less than an hour is employed, and if more than an hour be employed, not exceeding the rate of seventy-five cents for each hour. 1825-6, p. 16, § 3.
1826-7, p. 19, ch. 20, § 2.

§ 6. A commissioner returning a report shall annex thereto an affidavit, that he was diligently employed not less than hours in performing the services for which the fees 1 R. C. p. 317, § 14.
1825-6, p. 16, § 3.

stated at the foot thereof are charged. Until such affidavit is made, no bill shall be made out for said fees. A commissioner shall not be compelled to make out or return a report until his fees therefor be paid or security given him to pay so much as may be adjudged right by the court to which the report is to be returned, or if it be a circuit court, by the judge thereof in vacation, unless the court or judge see cause to order it to be made out and returned without such payment or security, and shall so order.

§ 7. A notary or commissioner returning affidavits or depositions of witnesses, shall state at the foot thereof the fees therefor. To whom such fees or the fees for a commissioner's report are charged, and if paid, by whom, shall also be mentioned, when the fees are stated.

1 R. C. p. 309.
1830-31, p. 80, ch.
23, § 1.
1831-2, p. 49, ch.
68, § 1, 2.

§ 8. *A clerk of a county or corporation court.*

Where a writing is admitted to record under chapter one hundred and twenty-one, for every thing relating to it, except the recording in the deed book, to wit: For receiving proof or acknowledgment, entering orders, writing on it clerk's certificate, statement of deed in list returned to court, recording in minute book, and posting same, and embracing it in list for commissioner of the revenue, - - - \$ 50

For recording a plat of not more than six courses, or for a copy thereof, - - - 50

For every course above six, - - - 3

For recording in the deed book such writing, and all matter therewith, (except plats,) or for recording any thing not otherwise provided for, for every thirty words, - - - 3

In lieu of the said allowance of three cents for thirty words, the clerk may, for recording in the deed book, elect to charge the following specific fees, to wit: Where the writing is a deed of trust or mortgage, or is a conveyance of real and personal estate, or of real estate only, - - - 75

And where it is not such, - - - 25

For swearing the witnesses, and entering in the order or minute book all orders in relation to the proof of a will which is admitted to record without contest, and copying such orders on the will, - - - 50

For recording a will, and the matter recorded therewith in the will book, at the option of the clerk, three cents for every thirty words, or a specific fee of - - - 30

If there be an order committing a decedent's estate to an officer, for entering and copying such order, and the orders of appraisement, and including case in list returned to clerk of general court, - - - 50

If any personal representative qualify, for swearing him and his surety, making out bond, entering and copying on the will order granting probat or administration, making one copy of such order for the representative, entering and copying orders of appraisement, and including case in said list, -	1 00	
If several personal representatives qualify on the same estate, during the same term, only the same fee shall be charged as if one had qualified, to wit, -	1 00	
For entering and copying an order granting a license, and administering an oath, where necessary, -	75	
On an application for a marriage license, for administering and writing certificate of oath, issuing and registering license, and recording and giving receipt for certificate of the marriage, - - -	1 00	
For a search for any thing above a year's standing, except where the clerk, at the request of counsel, searches for papers in a pending cause, - - -	10	
For recording a certificate and posting a copy thereof under the second section of chapter one hundred, -	50	Ante, p. 449, ch. 100.
For making out an injunction bond, administering all necessary oaths, writing proper affidavits, making out release of errors, copying same and endorsing on the summons that such bond and release are filed, -	75	
For making out any other bond, administering all necessary oaths and writing proper affidavits, -	50	
For issuing a writ in the nature of an <i>ad quod damnum</i> , -	85	
On receiving the copy of a <i>caveat</i> , for entering such copy, - - - - -	25	
For issuing a summons to answer a bill, with an endorsement thereon of an injunction, or of an order of attachment, and recording return of same, -	35	
For issuing any other summons, or any writ not particularly provided for, and for recording the return where proper to do so, - - - - -	20	
For each copy of any process which goes out of the office, (with such process,) to be used in serving it, one half the fee for issuing such process.		
For noting in the process book any decree, order or process, (except a summons for a witness,) and taking a receipt therefor, - - - - -	18	
For postage paid by the clerk on a decree, order or process, and putting in or taking out of post-office same, double the amount of such postage.		1 R. C. p. 212, § 71. 1830-31, p. 67, § 73. 1841-2, p. 49, ch. 85, § 2.
For entering in any suit or in a motion for judgment for money, all the attorneys for each party, or the appearance in proper person of a party having no attorney who so appears, - - - - -	10	
For endorsing and filing each petition, declaration, bill, answer or other written pleading, each bill of exceptions, demurrer to evidence, special verdict or case		

agreed, each written notice of the defence relied on in ejectment, or of a motion for judgment for money, and each report of a commissioner, and for entering each plea, replication or other pleading which is not written, - - - - -	15
For endorsing and filing all the depositions and affidavits of witnesses, filed on the same side at any one time, or all the written interrogatories at one time, from one party to another, or all the answers filed at one time to such interrogatories, or the exceptions filed at one time by either party to a commissioner's report, - - - - -	15
If papers be filed on the side of the plaintiffs, for which no particular fee is allowed, a fee (not for each, but for the whole) of - - - - -	20
So also, if papers be filed on the side of the defendants, for which no particular fee is allowed, a fee (not for each, but for the whole) of - - - - -	20
For issuing an attachment with a copy of the rule or order for the same, (if sent out therewith,) and recording the return thereof, where proper to do so, - - - - -	35
For issuing a <i>scire facias</i> and recording the return thereof; or for issuing a commission to examine witnesses, administering oath when necessary as the foundation thereof, and writing affidavit, - - - - -	50
For all the rules entered in any case on the same side, at the rules for one month, where any thing is done on such side at said rules, besides entering or filing a pleading or continuing the case, - - - - -	25
Where no proceedings are had in a case during any rules except to continue it, the fee shall be at the rate of 25 cents for every quarter of a year the case is so continued, and no more.	
For docketing any suit, or any motion for judgment for money, (to be charged only once,) - - - - -	10
Except that where an action or motion is on the court docket at a quarterly term, if no decision or continuance be entered in it, there shall be a fee for putting it on the docket at the next term, of - - - - -	18
Where a jury is empaneled, for swearing the jury and witnesses, - - - - -	70
Where no jury is empaneled, if witnesses be examined by the court, for swearing such witnesses for either party, - - - - -	20
Where a witness claims for his attendance, for administering an oath to him, and entering and certifying such attendance, - - - - -	30
For administering any oath not before provided for, and writing a certificate thereof, where the case requires one, - - - - -	15
For all judgments, decrees, orders and proceedings, (except entries of pleadings and matters otherwise	

provided for,) which are entered on the same day, for the same persons, at the election of the clerk, 3 cents for every thirty words, (actually written on the minute or order book, or upon the rule book, when final judgments are entered therein,) or a specific fee of - - - - -	20
For docketing under chapter one hundred and eighty-six a judgment, decree, bond or recognizance, -	25
For taxing costs in any case on one side, -	20
And if the case has been pending more than a year, then for every additional year, -	10
When an execution is returned by a constable in a case wherein there is no appeal from the justice's judgment for filing the papers, -	10
And if the clerk issue an execution in the case, for such execution and all his other services in the case, until and including the record of the return of said execution, (if it be returned before another issues,) -	40
For any other execution, the entry in the execution book and the record of the return, -	40
For making out a transcript of the record and proceedings in any case, in due form, so that the same may be used in an appellate court, for every thirty words three cents; and for making out, in any other manner than copying, any paper to go out of the office, which is not otherwise provided for, the same, or in lieu thereof, if the clerk elect, a specific fee of	25
For any copy to go out of the office, if it be not otherwise provided for, two cents for every thirty words, or in lieu thereof, if the clerk elect, a specific fee of	20
For annexing the seal of the court to any paper, writing the certificate of the clerk accompanying it, and writing certificate for the judge or presiding justice, if the clerk be requested so to do, -	37

§ 9. *A clerk of a circuit court.*

For a writ of <i>supersedeas</i> or other writ not used in a county court, -	50
For making out the bond upon issuing any such writ, administering necessary oaths and writing proper affidavits, -	50
Upon any such writ, for endorsing and filing the petition therefor, or when the writ is returned, for filing it, with the return thereon, -	15
For filing the record upon an appeal or on such writ, -	15
When the clerk of the court of appeals issues process on an appeal, writ of error or <i>supersedeas</i> , for making out the bond, administering necessary oaths, writing proper affidavits, and endorsing on the process a certificate of the execution of the bond, and of the names of the sureties therein, -	75

1 R. C. p. 305,
308.
1830-31, p. 85,
ch. 23, § 6.
1831-2, p. 53, ch.
68, § 3

1842-3, p. 51, ch.
75, § 1.

For docketing any case, a fee of 18 cents, or if the clerk elect, in lieu thereof, three cents for every thirty words entered on the rule book when it is first docketed; this fee for docketing to be charged but once, except that when any case, either at law or in equity, is on the court docket, if at any term it be left undecided, without an order of continuance, there shall be a fee for putting it on the docket at the next term, of - - - - -	25
For all judgments, decrees, orders and proceedings (except entries of pleadings and matters otherwise provided for,) which are entered on the same day for the same persons, at the election of the clerk, three cents for every thirty words (actually written on the order book, or upon the rule book, when final judgments are entered therein) or a specific fee of - - - - -	36
After a decision by the circuit court or court of appeals, as an appellate court, for issuing an execution, making entry thereof in the execution book, and recording the return, - - - - -	75
Unless the decision be by the court of appeals, in a case wherein the first judgment or decree was in a county or corporation court, in which case the fee shall be - - - - -	1 00
For taxing the damages to which a party may be entitled by reason of an injunction, appeal, writ of error or <i>supersedeas</i> , - - - - -	40
For all other services, the same fees as a clerk of a county or corporation court for similar services; except that the clerk of a circuit court may charge,—	

In chancery cases.

For issuing an attachment or a summons, with an endorsement of an order of attachment or injunction, - - - - -	50
For process for which no higher fee is allowed, - - - - -	25
If when a bill or answer is filed, there be filed at the same time any exhibit, on which the clerk endorses the name of the case and the day it is filed, for every such exhibit, - - - - -	5
When more than three exhibits are returned with a commissioner's report, (but not annexed thereto,) for endorsing and filing such exhibits, a fee, not for each, but for all filed with the same report, of - - - - -	25
If papers be filed on the side of the plaintiffs, for which no fee is before provided, a fee, not for each, but for the whole of such papers, of - - - - -	25
And if papers be filed on the side of defendants, for which no fee is before provided, a fee, not for each, but for the whole of such papers, of - - - - -	25
For entering in the rule book the return of all process returnable to the same rule day, a fee, not for each	

defendant named therein, nor for every such process, but for the whole of the defendants named in all such process, of	- - - - -	35
For all the rules entered in any case on the same side at the rules for one month, when any thing is done on such side at said rules, besides entering or filing a pleading or continuing the case, - - - - -	- - - - -	50
For any execution, the entry of the case in the execution book, and the record of the return, unless a higher fee be allowed therefor, - - - - -	- - - - -	50

§ 10. *The clerks of the court of appeals and general court.*

1 R. C. p. 305
to 308.

The same fees as the clerk of a circuit court for similar services.

In every case wherein printing is done under the nineteenth section of the one hundred and eighty-second chapter, the clerk of the court of appeals shall charge in such case to the appellants or plaintiffs in error, at the rate of a cent for every ten words actually printed, and to the appellees or defendants in error, at the like rate.

1841-2, p. 50, ch.
87, § 2.

§ 11. *A sheriff, sergeant or crier.*

1839, p. 40, ch.
63, § 3.
As to crier, ante,
p. 250, ch. 50,
§ 24.

For serving on any person a declaration in ejectment, or an order, notice, summons or other process, where the body is not taken, and making return thereof, - - - - -	50
Except that the fee for summoning a witness shall only be - - - - -	20
For serving on any person an attachment or other process under which the body is taken, - - - - -	60
For receiving a person in jail, twenty-five cents, and the like sum for discharging him therefrom.	
For carrying a prisoner to or from jail, for each mile of necessary travel, either in going or returning, - - - - -	5
For taking any bond, - - - - -	60
Where a jury is sworn in court, for summoning and empanneling such jury, - - - - -	1 00
Where a jury is summoned upon a writ of <i>elegit</i> or <i>ad quod damnum</i> , or any inquest in vacation, for summoning them, one dollar; and for attending at the place of their meeting, one dollar; and if the jury attend there, and an inquisition be found and returned, - - - - -	2 00
For serving a writ of possession, - - - - -	1 50
For serving a writ of <i>distringas</i> on a judgment or decree for personal property, if the specific thing be taken, - - - - -	1 50
For keeping and supporting any slave or other person confined in jail, for each day, - - - - -	30

1 R. C. p. 235,
§ 34; p. 533.
§ 24.
2 R. C. p. 287,
§ 12.

1 R. C. p. 533,
§ 24.
1841-2, p. 53, ch.
93, § 3.

For keeping and supporting any horse or live stock distrained or levied on, seventeen cents per day for each horse, mule or mare; and if the mare have a suckling colt, no more; five cents per day for each hog or head of horned cattle, and three cents per day for every sheep or goat.

1841-2, p. 52, ch.
91.
1844-5, p. 58, ch.
65.
1845-6, p. 108, ch.
143, 4.
1847-8, p. 60, ch.
86.

The court of any county or corporation may, at any time, when the acting justices have been summoned to consider the subject, or a majority thereof is present, fix or alter the rates to be thenceforth paid in such county or corporation for keeping and supporting any person in jail, or any horse or live stock; but the rates as fixed or altered shall never exceed those hereinbefore mentioned.

The officer shall be re-paid any necessary expense incurred by him in keeping property not before mentioned, or in removing any property; and when, after distraining or levying, he neither sells nor receives payment, and either takes no forthcoming bond, or takes one which is not forfeited, he shall, if in no default, have (in addition to the sixty cents for a bond, if one was taken) a fee of three dollars, unless this be more than the half of what his commission would have amounted to if he had received payment; in which case he shall (whether a bond was taken or not,) have a fee of sixty cents at the least, and so much more as is necessary to make the said half.

1 R. C. p. 447, § 4;
p. 532, § 19.

The commission to be included in a forthcoming bond (when one is taken,) shall be five *per centum* on the first three hundred dollars of the money for which the distress or levy is, and two *per centum* on the residue of said money: but such commission shall not be received unless the bond be forfeited, or the amount (including the commission) be paid to the plaintiff.

1 R. C. p. 282,
§ 27.
1842-3, p. 48, ch.
71, § 1.
1845-6, p. 60, ch.
80.

An officer receiving payment in money or selling goods shall have the like commission of five *per centum* on the first three hundred dollars of the money paid or proceeding from the sale, and two *per centum* on the residue; except that when such payment or sale is on an execution on a forthcoming bond, his commission shall be only half what it would be, if the execution were not on such bond.

§ 12. *A coroner or constable.*

1820-21, p. 32, ch.
32, § 1.

A coroner shall have for taking an inquest on a dead body, five dollars; and a constable, for summoning a coroner's jury and the witnesses, three dollars.

A constable shall have, for removing a person by virtue of a warrant, issued under chapter fifty-one, by a justice or one of the overseers of the poor (to be charged to said overseers) four cents for each mile of necessary travel, either in going or returning.

For whipping a slave, (to be paid by the owner,) - \$ 50 1841-2, p. 53, ch. 93.

For serving a warrant under chapter one hundred and fifty, or taking a bond, or giving a notice thereon, 30

But the fee for summoning a witness, or a garnishee on an attachment, shall only be - - - 20

For other services not otherwise provided for, a coroner and constable shall have the same fees as a sheriff or sergeant for similar services. 1825-6, p. 21, ch. 20.

How fees are charged; and fee bills made out.

§ 13. The fees mentioned in this chapter shall be charge- 1 R. C. p. 312.
able to the party at whose instance the service is performed, except that fees for entering and certifying the attendance of witnesses, and the proceedings to compel payment for such attendance, shall be charged to the party for whom the witness attended; and except also as follows:

§ 14. No clerk shall charge for taking bond from, adminis- 1 R. C. p. 313, § 4.
tering oaths to, or copying orders as to the recommendation, appointment or qualification of any justice, or of any sheriff, sergeant, coroner, commissioner of the revenue or surveyor, or of a deputy or assistant of any of them, or of any escheator, constable, militia officer, or overseer of the poor, or of a guardian where his bond is in a penalty not exceeding one thousand dollars, nor for making or copying orders as to binding out poor children, or as to county levies, or grand juries, and administering the necessary oaths.

§ 15. No sheriff or sergeant shall charge for serving such 1 R. C. p. 316.
or any other public orders, nor for summoning and empan-
neling grand juries; nor for any services in elections except
such as a fee is allowed for under the third title of this Code.

§ 16. No clerk, sheriff or sergeant shall receive payment 1 R. C. p. 281, § 21; p. 313, § 15; p. 316, § 10.
out of the treasury for any services rendered in cases of the
commonwealth, except where it is allowed hereinafter, or by
some other chapter.

§ 17. Every officer to whom the second section applies, 1 R. C. p. 281, § 21; p. 302, § 8; p. 312, 13, § 1, 7; p. 318, § 16, 17. 1825-6, p. 18, § 15. 1830-31, p. 85, ch. 23, § 3. 1839, p. 40, ch. 63, § 3.
shall keep a fee book, wherein shall be entered the fees for
every service performed by him, and the fact of such fees be-
ing paid, or of a bill being made out therefor, whichever shall
happen first. The fee books of a clerk shall be submitted to
the inspection of the commissioners appointed to examine the
clerk's office.

§ 18. No person shall be compelled to pay any fees before 1a.
mentioned, until there be produced to him a fee bill, signed
by the officer to whom the fees are due, expressing the par-
ticulars for which such fees are charged. And no such fee

1839, p. 40, ch.
63, § 2.

bill shall be made out for any service not previously performed, unless a person desire to pay before such performance; in which case, there shall be mentioned in such fee bill the nature of the service, and the fact that it is to be performed. Nor shall an officer, for any service, make out a fee bill for more than is allowed therefor. Nor shall he, for the same service, attempt to obtain payment a second time; or even make out a fee bill a second time, unless he endorse the fact, and swear that the former bill remains unpaid. For each item in which an officer shall violate this section, he shall forfeit five dollars to any person prosecuting therefor, and the circuit, county or corporation court of the county or corporation in which an officer resides, may, on motion, after reasonable notice to him, quash any fee bill made out by him contrary to law.

How bills are made out for fees due a deceased clerk.

1822-3, p. 16, ch.
13, § 1, 2, 6.

§ 19. When a clerk dies, his successor shall charge, in the fee books of the clerk's office, such lawful fees as do not appear to have been charged therein, for services performed by the decedent, and make out fee bills for such fees, and also for any fees charged on the said books by the decedent, for which he does not appear to have made out fee bills in his lifetime; except that such of these as appear to said successor to be for more than is allowed by law, shall be reduced by him so far as, in his judgment, is necessary, to make them legal.

Id. and § 3, 5.

§ 20. The fee bills made out under the preceding section shall shew on their face that they are for fees due the decedent, and shall be signed by his successor, and delivered to the personal representative of such decedent, as soon as practicable. Such successor shall receive, for his services under this and the preceding section, such compensation as the court, whereof he is clerk, shall adjudge to be reasonable, which shall be paid by said personal representative, or by the officer who may collect said fee bills, out of the first proceeds of said collection.

How fee bills are collected and accounted for.

1 R. C. p. 281,
§ 22; p. 302, § 7;
p. 312, § 2; p.
319, § 21, 22.
1822-3, p. 16, ch.
13, § 7.

§ 21. Any officer mentioned in this chapter, or the personal representative of a deceased clerk, may, after the first day of January and before the first day of July in any year, deliver fee bills signed as aforesaid, to any sheriff or collector of the public taxes, who shall receive and endeavour to collect the same. A sheriff or collector may distrain therefor or for any bills due himself, such property of the person to whom the fees are charged, as might be levied on, under a writ of *fieri facias* against him, except as hereinafter mentioned; and the eleventh,

twelfth and thirteenth sections of the thirty-sixth chapter, shall apply to such fee bills in like manner as to taxes. Ante, p. 196, ch. 36, § 11, 12, 13.

§ 22. Every sheriff or collector to whom such fee bills are so delivered, shall, on or before the fifteenth day of December next after such delivery, account therefor with the officer or personal representative entitled thereto, by returning such as he may not have collected, with an endorsement thereon that the person charged with the fees has no estate in his county or corporation, out of which the same could be made, and by paying to such officer or representative the amount of all not so returned, deducting a commission for himself of seven and a half *per cent.* on said amount. If he fail so to do, judgment may be obtained, on motion, against said sheriff or collector and his sureties, and his and their personal representatives, or against any deputy who may have signed the receipt for said fees, or his personal representative, for the amount with which such sheriff, collector or deputy is chargeable, and damages thereon not exceeding fifteen *per centum* per annum, from the said fifteenth day of December till payment. Such judgment may be, on motion in the circuit, county or corporation court, of the county or corporation in which said sheriff or collector resides, and if the fees be due to the clerk of the court of appeals held at the seat of government, it may be in any circuit, county or corporation court there holden. On such motion, any receipt for fees mentioned in the notice, as signed by any person, shall be deemed to be his signature, unless an affidavit be filed denying it. Id. and 1 R. C. p. 281, § 23 to 26. 3 Call 190.

§ 23. No fee bill shall be collected by distress, warrant or suit, after five years from the end of the year in which the service was performed that is charged therein, unless, within five years before the institution of such proceeding, it was returned by an officer, with such endorsement thereon (properly dated,) as is mentioned in the preceding section. 1839, p. 40, ch. 63, § 1. 12 Leigh 627.

§ 24. An officer or witness to whom, for fees or attendance, any thing is due that is taxed in costs for which there is judgment or decree, may, within one month after such judgment or decree, lodge in the clerk's office of the court wherein the same is rendered, his fee bills for such fees, or certificate for such attendance. The amount due each officer or witness for what is so lodged, shall, and the amount due the clerk himself for fees so included, may, within the said month, be noted in the margin of the order or execution book, opposite the entry of the case. An officer or witness, whose fees or certificate may be so noted, shall be paid the same out of the costs, by the person against whom the judgment or decree is; and the right to such payment shall be valid against any assignee of the judgment or decree. When the clerk issues execution in such case, he shall endorse thereon how much of said costs is for each officer or witness whose fees or certificate may be so noted; and the officer collecting said costs, shall pay the same accordingly to those entitled thereto. 1839, p. 40, ch. 63, § 2.

1 R. C. p. 367,
§ 18; p. 495, § 28.
1830-31, p. 67,
ch. 11, § 73.

§ 25. No officer mentioned in this chapter shall be obliged to perform services for a non-resident of this state, unless payment of his fees for said services be secured; nor to perform services for any person against whom he has had fee bills returned which remain unsatisfied, unless he be secured payment of his fees for the services desired, or performance of said services be directed by a court.

1841-2, p. 50,
ch. 87, § 2.
1843-4, p. 46,
ch. 54, § 2.
Ante, p. 686, ch.
182, § 19.

§ 26. Each clerk of the court of appeals shall annually render to the first auditor an account of all money received by him within the year ending the fifteenth day of December, for records printed under the nineteenth section of the one hundred and eighty-second chapter, and, after swearing to the correctness of said account, shall pay one half of said money into the treasury on or before the first day of January next following.

Payments to officers out of the treasury.

§ 27. There shall be paid out of the treasury to clerks, sheriffs, sergeants, coroners and constables, (after the same are duly certified to the first auditor,) as follows, to wit:

To a clerk of a county or corporation court.

1 R. C. p. 310,
1841-2, p. 52,
ch. 90, § 3.

§ 28. When the court is sitting for the examination of a person charged with felony, or for the trial of a negro, three dollars and fifty cents; to be charged but once in the same case, whether the court sit therein more than one day, or not.

To a clerk of any circuit court.

1 R. C. p. 236,
§ 41; p. 321, § 28.
1830-31, p. 58,
ch. 11, § 48.
1831-2, p. 56,
ch. 68, § 5.

§ 29. For services rendered the commonwealth in a civil case, such fees as would be charged for the like services rendered to an individual; and for other public services, unless he receives an annual salary, such sum as the court may allow him, not exceeding thirty dollars for one year.

To a sheriff or any other officer.

1 R. C. p. 314 to
316.
1835-6, p. 47,
ch. 90.

§ 30. For an arrest for felony, one dollar; and for conveying any person, charged with or convicted of felony, to jail, or from one jail to another, or to the penitentiary, for each mile in going and returning ten cents. The officer shall also be allowed for the support of the prisoner during the removal, and for assistance to make the arrest or effect the removal, such charge as may have been necessarily incurred by him, to be shewn by his own affidavit; and where he has assistance, by the affidavit also of each person employed by him; such charge for assistance not to exceed, where it is in making an arrest, seventy-five cents per day for each person employed to assist him, and not to exceed, where it is in conveying a prisoner, ten cents per mile going and returning for each guard.

§ 31. For executing a writ of *venire facias*, one dollar and fifty cents; for whipping a free person by order of a court or justice, fifty cents; and for executing a sentence of death, five dollars in addition to the expenses actually incurred by the officer in its execution. 1 R. C. p. 314 to 316.
1835-6, p. 47, ch. 90.

To a constable.

§ 32. For an arrest in any criminal case other than felony, - - - - - 50 1 R. C. p. 316, 17.
For summoning a witness in any criminal case, - 20
For executing a search warrant, - - - 50

To a sheriff or sergeant.

§ 33. For attending any circuit court and for all services for the commonwealth, not otherwise provided for, such sum as the said court may allow him, not exceeding twenty dollars for one year. 1 R. C. p. 236, § 41, 42.
1830-31, p. 58, ch. 11, § 48.

To a jailor.

§ 34. In a case of the commonwealth for receiving a person in jail when first committed, - - - 25 1821-2, p. 11, ch. 8, § 2.
1841-2, p. 52, ch. 90, § 1, 2.
1844-5, p. 58, ch. 65.
For keeping and supporting him therein for each day, 30 1845-6, p. 108, ch. 143, 144.
1847-8, p. 60, ch. 86; p. 156, § 4.
For discharging him therefrom, - - - 25

§ 35. For attending any circuit court having jurisdiction of criminal cases, and for all services for the commonwealth not otherwise provided for, such sum as the said court may allow him, not exceeding thirty dollars for one year. In *Spotsylvania* the allowance may be apportioned between the jailor at the county courthouse and the jailor in *Fredericksburg*, as the court may deem just. Id.
1832-3, p. 40, ch. 61, § 8.

Payments to officers by county or corporation.

§ 36. There shall be chargeable on every county or corporation such sum as the court thereof may, for services to the public and the county or town, allow its clerk and the sheriff or sergeant attending it, not exceeding for one year one hundred dollars to its clerk and seventy-five dollars to its sheriff or sergeant; except that the corporation court of *Richmond* may allow a sum not exceeding three hundred dollars to its clerk and not exceeding two hundred dollars to its sergeant. 1 R. C. p. 260, § 78; p. 313, § 4; p. 316, § 9.
1838, p. 70, ch. 89.

CHAPTER CLXXXV.

OF COSTS GENERALLY.

SEC.

1. Poor persons allowed services from counsel and officers, without fees or costs.
2. Security for costs; how required; when suit dismissed, if not given; if given, by bond; remedy thereon.
3. How obligor in such bond may obtain indemnity.
4. Costs on certain motions and interlocutory orders.
5. When new trial is granted.
6. In personal action not on contract, where verdict is for less than \$10.
7. In personal action on contract, where less is found due than \$20 exclusive of interest.

SEC.

8. General rule that party for whom final judgment is given in action or on motion for money, recovers costs; how, where judgment for, or discontinuance as to some, but not all the defendants.
9. When suit is in name of one person for benefit of another.
10. How laws of costs are interpreted; discretion of courts of equity.
11. Costs in appellate court.
12. } How costs are taxed by the clerk;
to } what he includes for attorney's
15. } fee; and what else he taxes.
16. Taxation in cases of the commonwealth; who receives what is taxed in such cases.

Privilege extended to poor persons.

1 R. C. p. 481,
ch. 124, § 1, 2, 3.

§ 1. A poor person may be allowed by a court to sue or defend a suit therein, without paying fees or costs; whereupon he shall have, from any counsel whom the court may assign him, and from all officers, all needful services and process, without any fees to them therefor, except what may be included in the costs recovered from the opposite party.

Security for costs.

1 R. C. p. 485,
§ 31.
1848-9, p. 52, ch.
97.
4 Munf. 364.
Gilm. 123.
1 Va. Cas. 123.

§ 2. In any suit, (except where such poor person is plaintiff,) there may be a suggestion on the record in court, or (if the case be at rules) on the rule docket, by a defendant or any officer of the court, that the plaintiff is not a resident of this state, and that security is required of him. After sixty days from such suggestion, the suit shall, by order of the court, be dismissed, unless before the dismissal the plaintiff be proved to be a resident of the state, or security be given before said court or the clerk thereof, for the payment of the costs and damages which may be awarded to the defendant, and of the fees due, or to become due, in such suit, to the officers of the court. The security shall be by bond payable to the commonwealth; but there need only be one obligor therein, if he be sufficient. The court, before which or before whose clerk such bond is given, may, on motion by a defendant or officer, give judgment for so much as he is entitled to, by virtue of said bond.

1842-3, p. 54, ch.
77, § 1.

§ 3. On the motion of an obligor in such bond, after reasonable notice to the plaintiff, his attorney at law or agent, the court may order bond to be given, with sufficient security, in

a penalty equal to the penalty of the former bond, payable to the applicant, and conditioned to indemnify and save harmless the applicant against all loss or damage, in consequence of executing the former bond. If the bond, required under this section, be not given within such time as the court may prescribe, it may order the suit to be dismissed.

Cases wherein costs are recovered.

§ 4. Upon any motion (other than for a judgment for money,) or upon any interlocutory order or proceeding, the court may give or refuse costs, at its discretion, unless it be otherwise provided. It may, when a demurrer is sustained to a plea in abatement, give judgment for the plaintiff for his full costs to the time of sustaining it, an attorney's fee only excepted; and when any other part of the pleading is adjudged insufficient, order all costs occasioned by such insufficient pleading to be paid by him who committed the fault.

1 R. C. p. 494,
§ 24; p. 495, § 26.
3 and 4 Will. iv.
ch. 42, § 3.
3 and 4 Vict. ch.
24, § 5.

§ 5. The party to whom a new trial is granted shall, previous to such new trial, pay the costs of the former trial, unless the court enter that the new trial is granted for misconduct of the opposite party, who, in such case, may be ordered to pay any costs which seem to the court reasonable. If the party who is to pay the costs of the former trial, fail to pay the same at or before the next term after the new trial is granted, the court may, on the motion of the opposite party, set aside the order granting it, and proceed to judgment on the verdict, or award execution for said costs, as may seem to it best.

1 R. C. p. 495,
§ 27.

§ 6. In any personal action not on contract, if a verdict be found for the plaintiff, on an issue or otherwise, for less damages than ten dollars, he shall not recover, in respect to such verdict, any costs, unless the court enter of record that the object of the action was to try a right, besides the mere right to recover damages for the trespass or grievance in respect of which the action was brought, or that the said trespass or grievance was wilful or malicious.

Id. p. 493, § 20,
21.
3 and 4 Vict. ch.
24, § 2.
2 Va. Cas. 26, 93.

§ 7. In any personal action on contract, wherein it is ascertained that less is due to the plaintiff than twenty dollars, exclusive of interest, judgment shall be given for the defendant, unless the court enter of record that the matter in controversy was of greater value than twenty dollars, exclusive of interest; in which case it may give judgment for the plaintiff for what is ascertained to be due him, with or without costs, as to it may seem right.

1 R. C. p. 253,
§ 30; p. 495, § 21.
1841-42, p. 42, ch.
67.
1 Va. Cas. 131,
140.
2 Va. Cas. 203,
205.

§ 8. Except where it is otherwise provided, the party for whom final judgment is given in any action, or in a motion for judgment for money, whether he be plaintiff or defendant, shall recover his costs against the opposite party; and when the action is against two or more, and there is a judgment for, or discontinuance as to some but not all of the defendants, unless

1 R. C. p. 195,
§ 21; p. 493, § 21.
3 & 4 Will. iv. ch.
42, § 32.

the court enter of record that there was reasonable cause for making defendants, those for whom there is such judgment, or as to whom there is such discontinuance, (and order otherwise,) they shall recover their costs.

§ 9. When a suit is in the name of one person for the benefit of any other, if there be judgment for the defendant's costs, it shall be against such other.

1 R. C. p. 494,
§ 25; p. 495, § 31.

§ 10. The laws of costs shall not be interpreted as penal laws; nor shall any thing in this chapter take away or abridge the discretion of a court of equity over the subject of costs, except as follows:

1 R. C. p. 195,
§ 21; p. 494, § 23.

§ 11. In every case in an appellate court, costs shall be recovered in such court by the party substantially prevailing.*

How costs are taxed.

1 R. C. p. 270,
271, § 14 to 17.

§ 12. The clerk of the court wherein any party recovers costs, shall tax said costs.

§ 13. He shall include in the costs, for the fee of such party's attorney, (if he have one:)

1842-3, p. 48, ch. 71, § 3.	In a county or corporation court, on an appeal from the judgment of a justice, - - - - -	\$1 25
	In a circuit, county or corporation court, unless it be a case of judgment by default on a forthcoming bond, or a case otherwise provided for, - - - - -	2 50
1 R. C. p. 241, § 67.	In a county or corporation court, when it is a complaint of unlawful entry or detainer, or an action of ejectment, or a case in chancery, - - - - -	5 00
	In a case of the commonwealth, if no higher fee be allowed, - - - - -	5 00
	In the general court, in any case except a judgment by default on a forthcoming bond, - - - - -	8 00
	In a circuit court, in an action of ejectment, or on a writ of error or <i>supersedeas</i> , or an appeal, (other than in a chancery case,) - - - - -	5 00
	In a chancery case (other than a motion) in a circuit court, whether as a court of original or appellate jurisdiction, - - - - -	15 00
	In the court of appeals, - - - - -	20 00

1 R. C. p. 313,
§ 3.

§ 14. Although the party recovering may have had more than one attorney, only the fee of one shall be taxed in the same court.

1 R. C. p. 201,
§ 26; p. 312, 13,
§ 3; p. 317, § 14;
p. 495, § 29, 30;
p. 520, ch. 131,
§ 18, 21; p. 522,
ch. 132.
1822-3, p. 39, ch.
37, § 3.
1826-7, p. 19, ch.
20, § 2.

§ 15. The clerk shall tax in the costs all taxes on process and all fees of officers, which the said party appears to be chargeable with in the case wherein the recovery is, except that where, in any court on the same side, more than one copy of any thing is obtained or taken out, there shall be taxed only the fee for one copy of the same thing. He shall also tax two and a half dollars for the cost of executing any order

3 Rand. 557.
2 Va. Cas. 399.

* Cases numerous; see, amongst others, 3 Leigh 609; 12 Leigh 590; 1 Rob. 148; 2 Rob. 39.

of publication made in the case for such party; two dollars for publishing in a newspaper any notice from him in the case, other than such order; fifty cents for each legal notice from him therein, which is served in this state, and not otherwise taxed; and the allowances to his witnesses, and any further sum which the court may deem reasonable and direct to be taxed for depositions taken out of the state, or for any other matter.

In cases of the commonwealth.

§ 16. In a case wherein there is judgment or decree, on behalf of the commonwealth, for costs, there shall be taxed, in the costs, the charge actually incurred to give any notice, although it be more than fifty cents; and the fees of attorneys and other officers for services, and allowances for attendance, as if such fees and allowances were payable out of the treasury. What is so taxed for fees of, or allowance to, any person, shall be paid to him, by the sheriff or officer, who may receive said costs unless such person shall previously have received payment thereof, in which case the same shall be paid into the treasury.

1 R. C. p. 313, § 5;
p. 316, § 10; p.
272, § 18.
1831-2, p. 56, ch.
68, § 6.

Title 53.

JUDGMENT LIENS, AND EXECUTIONS.

CHAP. 186. Of enforcing decrees and orders; docketing judgments and other liens of the like nature; the effect of such liens; and the limitation and proceedings on judgments.

187. Of executions for specific property; and of writs of *elegit* and *fieri facias*.

188. Means of enforcing recoveries of money otherwise than by levying an *elegit* or *fieri facias*.

189. Of forthcoming bonds.

CHAPTER CLXXXVI.

OF ENFORCING DECREES AND ORDERS; DOCKETING JUDGMENTS, AND OTHER LIENS OF THE LIKE NATURE; THE EFFECT OF SUCH LIENS; AND THE LIMITATION OF PROCEEDINGS ON JUDGMENTS.

SEC.

1. Decrees and orders for property or money have effect of judgments; embraced by word "judgment" where used under this title.

SEC.

2. How execution issues on decree or order for money to be paid into court, or a bank or place of deposit.

SEC.		SEC.	
3.	} Of docketing a judgment, bond or recognizance; penalty on clerk for failure in duty.	9.	Jurisdiction of equity to enforce judgment lien; power to decree a sale.
4.		10.	As between alienees of different parts of estate liable.
5.	<i>Lis pendens</i> to be docketed.	11.	When judgment creditors share ratably.
6.	Judgment a lien on all debtor's real estate; from what time.	12.	} Limitation of proceedings to enforce judgments.
7.	Operation of judgment before this act commences, as against purchaser, creditors, heirs or devisees.	13.	
8.	Judgment not a lien against a purchaser for value without notice, unless docketed.	14.	Limitation of motion for officer's failure to return execution.

Decrees and orders on the footing of judgments.

1 R. C. p. 545,
§ 55, 56.
1 and 2 Vict. ch.
110, § 118.
2 Leigh 101, 361.

§ 1. A decree for land or specific personal property, and a decree or order requiring the payment of money, shall have the effect of a judgment for such land, property or money, and be embraced by the word "judgment" where used in any chapter under this title. But a party may proceed to carry into execution a decree or order in chancery other than for the payment of money, as he might have done if this and the following section had not been enacted.

Id.

§ 2. The persons entitled to the benefit of any decree or order requiring the payment of money shall be deemed judgment creditors, although the money be required to be paid into a court or a bank or other place of deposit. In such case, an execution on the decree or order shall make such recital thereof, and of the parties to it, as may be necessary to designate the case; and if a time be specified in the decree or order within which the payment is to be made, the execution shall not issue until the expiration of that time.

Docketing judgments and other liens of a like nature.

1842-3, p. 51, ch.
75.

§ 3. In the following section, the word "judgment" shall include any bond or recognizance which has the force of a judgment.

Id.

§ 4. The clerk of each county and corporation court shall keep in his office, in a well bound book, a judgment docket, in which he shall docket without delay any judgment in this state, when he shall be required to do so by any person interested, on such person's delivering him, if the judgment be not in his court or office, an authenticated abstract of it. In such docket there shall be stated, in separate columns, the date and amount of the judgment, the date of docketing it, the alternative value of any specific property recovered by it, and the amount and date of any credits on the judgment, with the names, description and residence of the parties so far as they appear in his office or in such abstract. Every judgment shall, so soon as it is docketed, be indexed in the name of each defendant therein. If a clerk fail to do any thing required of him by this section, he shall pay a fine of not less

than thirty nor more than three hundred dollars to any person who will prosecute therefor.

§ 5. No *lis pendens* shall bind or affect a purchaser of real estate, without actual notice thereof, unless and until a memorandum setting forth the title of the cause, the general object thereof, the court in which it is pending, a description of the land, and the name of the person whose estate is intended to be affected thereby, shall be left with the clerk of the court of the county or corporation in which the land is situate, who shall forthwith record the said memorandum in the deed book, and index the same by the name of the person aforesaid.

2 Vict. 11, § 7.

2 Rand. 93.

5 Leigh 627.

6 Leigh 399.

9 Leigh 293.

1 Rob. 169.

Lien of judgments on real estate.

§ 6. Every judgment for money rendered in this state heretofore or hereafter, against any person, shall be a lien on all the real estate of, or to which such person shall be possessed, or entitled at or after the date of such judgment, or if it was rendered in court, at or after the commencement of the term at which it was so rendered, except as follows :

1 & 2 Vict. ch. 110, § 11, 13.

4 Munf. 539.

Gilm. 196.

1 Leigh 140.

2 Leigh 268.

8 Leigh 271.

2 Grat. 44, 419.

4 Grat. 81, 407.

§ 7. A judgment rendered before the commencement of this act shall, as against a purchaser or creditor, claiming under a deed made or judgment obtained before the day of such commencement, or as against the heirs or devisees of a person dying before that day, affect no more of such real estate than would have been liable thereto, under the laws in force on the day before this chapter takes effect.

2 Call 125.

4 Munf. 546.

6 Rand. 618.

8 Leigh 503.

10 Leigh, 394-5.

12 Leigh 573.

§ 8. No judgment shall be a lien on real estate as against a purchaser thereof for valuable consideration without notice, unless it be docketed according to the third and fourth sections of this chapter, in the county or corporation wherein such real estate is, either within a year next after the date of such judgment, or ninety days before the conveyance of said estate to such purchaser.

1 & 2 Vict. ch. 110, § 11, 13, 19.

1842-3, p. 51, ch. 75.

§ 9. The lien of a judgment may always be enforced in a court of equity. If it appear to such court that the rents and profits of the real estate, subject to the lien, will not satisfy the judgment in five years, the court may decree the said estate or any part thereof to be sold, and the proceeds applied to the discharge of the judgment.

7 Leigh 331.

10 Leigh 394.

2 Grat. 44.

§ 10. Where the real estate liable to the lien of a judgment is more than sufficient to satisfy the same, and it or any part of it has been aliened, as between the alienees for value, that which was aliened last shall, in equity, be first liable, and so on with other successive alienations, until the whole judgment is satisfied. And as between alienees who are volunteers under such judgment debtor, the same rule as to the order of liability shall prevail. But any part of such real estate retained by the debtor himself, shall be first liable to the satisfaction of the judgment.

2 Leigh 125.

3 Leigh 532.

10 Leigh 394.

4 Grat. 81.

§ 11. Where two or more judgments are rendered against the same person, and the lien thereof on his real estate commences on the same day, the creditors having such judgments shall be entitled to satisfaction out of said real estate ratably.

Limitation of proceedings to enforce judgments.

1 R. C. p. 489, § 5;
p. 492, § 17.

4 Munf. 104.

6 Munf. 32.

1 Rand. 432.

3 Rand. 490.

4 Leigh 189, 303,

338.

10 Leigh 93, 587.

Leigh 2.

1 Rob. 591.

4 Grat. 25.

§ 12. On a judgment, execution may be issued within a year, and a *scire facias* or action may be brought within ten years after the date of the judgment; and where execution issues within the year, other executions may be issued, or a *scire facias* or action may be brought within ten years from the return day of an execution on which there is no return by an officer, or within twenty years from the return day of an execution on which there is such return; except that where the *scire facias* or action is against the personal representative of a decedent, it shall be brought within five years from the qualification of such representative.

1 R. C. p. 483, § 6;
p. 492, § 17.

6 Munf. 185.

See ante, p. 593, 4,
ch. 149, § 15, 16,
17, 18, 19.

§ 13. No execution shall issue, nor any *scire facias* or action be brought on a judgment in this state, other than for the commonwealth, after the time prescribed by the preceding section, except that, in computing the time, any time during which the right to sue out execution on the judgment is suspended by the terms thereof, or by legal process, shall be omitted; and the fifteenth, sixteenth, seventeenth, eighteenth and nineteenth sections of chapter one hundred and forty-nine shall apply to the right to bring such action or *scire facias* in like manner as to any right, action or *scire facias* mentioned in those sections; and except that when the judgment is for the penalty of a bond, but to be discharged by the payment of what is then ascertained, and such sums as may be afterwards assessed or found due upon a *scire facias* on the judgment, assigning a further breach of the bond, such *scire facias* may be brought within ten years after such breach.*

1 R. C. p. 483,
§ 5, 6.

§ 14. A motion against an officer or his sureties, or his or their representatives, for a failure to return an execution, shall be made within ten years from the return day thereof, and not after.

* The words in *italics* were introduced in the senate by way of amendment; and the amendment was concurred in by the house of delegates; they seem to have been casually omitted in the pamphlet of amendments prepared after the adjournment of the assembly by the clerk of the house.

CHAPTER CLXXXVII.

OF EXECUTIONS FOR SPECIFIC PROPERTY; AND OF WRITS OF ELEGIT AND FIERI FACIAS.

SEC.

1. How execution issues against a corporation; or on joint judgment against two or more.
2. *Fieri facias* or *elegit* allowed on judgment for money; no *levari facias* to issue; *distringas* only for specific personal property.
3. How execution issues where judgment is for benefit of other person than plaintiff; remedies of such person.
4. On judgment for specific property, a writ of possession; *fi. fa.* for damages or profits and costs.
5. Plaintiff may have *fi. fa.* for alternative value (instead of writ of possession) and damages and costs; or a *distringas*.
6. How *distringas* may be superseded and executed for value; how value ascertained.
7. *Elegit* on a judgment before this act, how issued and returned.
8. Form of *elegit* on judgment hereafter.
9. Return of *elegit* on such judgment.
10. When land extendible is omitted; remedy.
11. *Fieri facias*, what it may be levied on; from what time it binds.
12. If levy on coin or bank notes; how accounted for.

SEC.

13. Officer's duty to endorse time of receiving *fi. fa.*; remedy against him for failure.
14. Where several writs of *fi. fa.* how satisfied.
15. What return to be made on *fi. fa.*; what statement to be therewith; officer's duty to pay.
16. When purchaser at officer's sale fails to comply, power to re-sell; remedy against purchaser at first sale.
17. *Venditioni exponas*; when it may issue; proceedings thereon.
18. Where officer taking property under execution dies before sale, and there are no deputies, writ of *venditioni exponas* goes to new officer; proceedings in such case; provision for new execution.
19. When money received under execution may be re-paid to debtor.
20. Officer not required to go out of his county or corporation to pay money made by him.
21. After one execution has issued, provision for others.
22. In certain cases new execution allowed on *scire facias*, or motion; limitation thereof.
23. How execution may be quashed.

As to issuing executions generally.

§ 1. Against a corporation such executions may issue as against a natural person. And where a judgment is against several persons jointly, executions thereon shall be joint against them all.

1 R. C. p. 473, § 4; p. 537, § 3.
1836-7, p. 45, ch. 68, § 4; p. 77, ch. 84, § 10.

§ 2. On a judgment for money, there may be issued a writ of *fieri facias* or writ of *elegit*. No writ of *levari facias* shall be issued hereafter; nor a writ of *distringas*, except on a judgment for specific personal property.

1 R. C. 524, 5.

§ 3. Where an execution issues on a judgment for the benefit, in whole or in part, of any person other than the plaintiff, if the fact appear by the record, the clerk shall, in the execution or an endorsement thereon, state the extent of the interest therein of such person; and he (either in his own name or that of the plaintiff,) may, as a party injured, prosecute a suit or motion against the officer.

1 Leigh 436, 442.
2 Leigh 560.
3 Leigh 189.
1 Grat. 156.

Of executions for specific property.

§ 4. On judgments for the recovery of specific property,

1839, p. 44, ch. 60.

3 Rand. 501,

real or personal, a writ of possession may issue for the specific property, which shall conform to the judgment as to the description of the property and the estate, title or interest recovered; and there may also be issued a writ of *feri facias* or *elegit* for the damages or profits and costs.

Id.

5 Munf. 167.

§ 5. When the judgment is for personal property, the plaintiff may, at his option, have a *feri facias* for the alternative value (instead of a writ of possession,) and the damages and costs. Or he may have a writ of *distringas*.

1 R. C. p. 541,
§ 46.

5 Munf. 166.

§ 6. If a *distringas* issue, the court, on the motion of either party, may order it to be superseded as to the specific thing, and to be executed in lieu thereof for the alternative value. Such value, if not fixed in the judgment, may be ascertained by a jury, to be forthwith empaneled.

Of the writ of elegit.

§ 7. A writ of *elegit* on a judgment rendered before the commencement of this act, shall be issued and returned according to the laws in force on the day before such commencement.

1 R. C. p. 525.
1 and 2 Vict. ch.
10 § 11.

§ 8. A writ of *elegit* on a judgment hereafter rendered, shall be to the following effect:

The commonwealth of Virginia, to the sheriff of
county (or, to the sergeant of, &c. :) *Whereas, A. B., before,*
&c. on the *day of* *(and if it was in court, at a term*
commencing on the *day of* *), recovered against*
C. D. the sum of (insert principal sum recovered, and interest,
if any,) *and* *for his costs: Now we command you to cause*
all the real estate of, or to which the said C. D. was possessed
or entitled, on or after the day aforesaid on which the said
judgment was rendered, (or, if it was in court, on which the
said term commenced.) to be delivered, by reasonable extent,
to the said A. B., for him and his assigns to hold the same,
until the amount of the said judgment be levied thereof; and
make return hereof at, &c.

1 R. C. p. 526.

§ 9. The return of a writ of *elegit*, issued under the preceding section, shall be to the following effect:

Inquisition taken in the county (or corporation,) of *, on the*
day of *, in the year* *, before E. F., sheriff, (or ser-*
geant, or deputy sheriff or sergeant,) of the said county or corpo-
ration, by virtue of the annexed writ, and by the following jurors,
to wit: A. B., &c., who, upon their oaths, do say, that C. D.,
named in the said writ, was, on or after the day on which (or, if
it was in court, the day the term commenced at which,) the
judgment therein mentioned was rendered, possessed or entitled, of
or to the following real estate, (and none other to their know-
ledge,) in the said county (or corporation,) to wit: (here de-
scribe the same;) and that the said real estate is of the annual
value of *; and I, the said*
sheriff, (or deputy sheriff,) as aforesaid, have delivered the said

real estate to G. H., in the said writ named, at such value, for him and his assigns to hold the same until the amount of the said judgment be levied thereof. In testimony whereof, we, the sheriff and jurors aforesaid, hereto put our hands.

§ 10. An extent shall not be avoided or delayed, because part of the land extendible is omitted out of such extent; but there shall be saved to those whose lands are extended, their remedy for contribution against a person whose lands are so omitted. 1 R. C. p. 527, § 5, 6.

Of the writ of fieri facias.

§ 11. By a writ of *fieri facias*, the officer shall be commanded to make the money therein mentioned out of the goods and chattels of the person against whom the judgment is. The writ may be levied as well on the current money and bank notes, as on the goods and chattels of such person; and as against purchasers for valuable consideration without notice, and creditors, shall bind what it may be levied on only from the time that the writ is delivered to the officer to be executed. 1 R. C. p. 524; p. 473, § 4; p. 229, § 13. 1836-7, p. 45, ch. 68, § 4. 1 and 2 Vict. ch. 10, § 12. 2 H. and M. 89. 3 Munf. 417. 2 Va. Cas. 246. 3 Leigh 392. 9 Leigh 18, 176. 3 Grat. 343.

§ 12. If the levy be upon gold or silver coin, the same shall be accounted for at its par value as so much money made under the execution. If it be upon bank notes, and the creditor will not take them at their nominal value, they shall be sold and accounted for as any other property taken under execution.

§ 13. Every officer shall endorse on each writ of *fieri facias* the year, month, day, and time of day, he receives the same. If he fail to do so, the judgment creditor may, by motion, recover against him and his sureties, jointly and severally, in the court in which the judgment was rendered, a sum not exceeding fifteen *per centum* upon the amount of the execution. 1 R. C. p. 529, § 13.

§ 14. Of writs of *fieri facias*, that which was first delivered to the officer, though two or more be delivered on the same day, shall be first levied and satisfied, and where several such executions are delivered to the officer at the same time, they shall be satisfied *pari passu*.

§ 15. Upon a writ of *fieri facias*, the officer shall return whether the money therein mentioned is or cannot be made; or if there be only part thereof which is or cannot be made, he shall return the amount of such part. With every execution under which money is recovered, he shall return a statement of the amount received, including his fees and other charges; and such amount, except the said fees and charges, he shall pay to the person entitled. 1 R. C. p. 526; p. 543, § 50.

§ 16. If, at any sale by an officer, the purchaser shall not comply with the terms of sale, the officer may sell the property, either forthwith or under a new advertisement, or return that the property was not sold for want of bidders. If,

on a re-sale, the property be sold for less than it sold for before, the first purchaser shall be liable for the difference to the creditor, so far as is required to satisfy him, and to the debtor for the balance. This section shall not prevent the creditor from proceeding as he might have done if it had not been enacted.

Of the writ of venditioni exponas.

1 R. C. p. 533,
§ 79.

§ 17. When it appears by the return on an execution, that property taken to satisfy it remains unsold, a writ of *venditioni exponas* may issue; whereupon the like proceedings shall be had as might have been had on the first execution, except that if it issue upon a return of no sale for want of bidders, or of a sufficient bid, the notice shall state the fact, and that the sale will be made peremptorily.

1 R. C. p. 543,
§ 51, 52, 53.
See ante, p. 248,
ch. 49, § 18.

1 Call 295.

§ 18. If an officer, taking property under execution, die before the sale thereof, and there be no deputies (of such officer,) acting in the case, upon a suggestion of the fact, a writ of *venditioni exponas* may be directed to such sheriff or other officer of the county or corporation wherein the property was taken, as may be in office at the time the writ issues. Whereupon the representatives of the officer so dying, shall deliver the property to the officer to whom the writ is directed. If they fail so to do, on his producing the said writ, and executing a receipt for the property to them, or if, after three months from the death of such officer, he have no personal representative, upon a return of the fact, execution may be issued, by virtue of which, such sheriff or other officer of the county or corporation, may seize the said property. An officer seizing or receiving property under this section, shall sell it and account therefor as if the levy on it had been by himself.

What money received under execution is to be paid debtor; officer not obliged to go out of his county to pay money.

1 R. C. p. 534,
§ 29.

§ 19. When an officer has received money under execution, if any surplus remain in his hands after satisfying the execution, such surplus shall be re-paid to the debtor; and if the debtor or his personal representative, obtain an injunction or *supersedeas* to an execution, in whole or in part, before money received under it, or any part of it, is paid over to the creditor, the officer shall re-pay such debtor the money so received, and not so paid over, or so much thereof as the injunction or *supersedeas* may extend to, unless the said process otherwise direct.

1 R. C. p. 283,
§ 29; p. 544, § 54.

4 Munf. 455.
9 Leigh 297.

§ 20. No officer receiving money under execution, when the person to whom it is payable resides in a different county or corporation from that in which the officer resides, shall be liable to have any judgment rendered against him or his sureties for the non-payment thereof, until a demand of payment

be made of such officer in his county or corporation, by such creditor or his attorney at law, or some person having a written order from the creditor.

After one execution has issued, provision for others; how execution may be quashed.

§ 21. Subject to the limitations prescribed by chapter one hundred and eighty-six, a party obtaining an execution may sue out other executions at his own costs, though the return day of a former execution has not arrived; and may sue out other executions at the defendant's costs, where on a former execution there is a return by which it appears that the writ has not been executed, or that it or any part of the amount thereof is not levied, or that property levied on has been discharged by legal process which does not prevent a new execution on the judgment. In no case shall there be more than one satisfaction for the same money or thing.

1 R. C. p. 527,
ch. 134, § 3.
1839, p. 44, ch. 69.
1 Call 492.
6 Rand. 618.
2 Leigh 361.

§ 22. If a tenant by *elegit* be lawfully evicted, or the land extended be lawfully sold, and any part of the judgment be unpaid, or when property sold under execution, or its value, is recovered from an obligor in an indemnifying bond given before such sale, or from a purchaser having a right of action on such bond, the person having such judgment or execution, or his personal representative may, by *scire facias*, or motion after reasonable notice to the person, or the personal representative of the person, against whom the judgment or execution was, obtain a new execution against him in the latter case, for the amount for which the property sold, with interest from the day of sale, and in the other cases, for so much of the judgment as remains unpaid. Such *scire facias* shall be sued out, or such motion made within five years after the right to sue out or make the same.

1 R. C. p. 527,
§ 4.
5 Leigh 102.

§ 23. A motion to quash an execution may, after reasonable notice to the adverse party, be heard and decided on, if a justice issued the execution, by such justice or the court to which he belongs, and in other cases, by the court whose clerk issued the execution, or if it was from a circuit court, by the judge thereof, in vacation.

2 Wash. 54, 194.
2 H. & M. 181.
4 H. & M. 293.
1 Munf. 284.
4 Rand. 427.
5 Rand. 639.

CHAPTER CLXXXVIII.

MEANS OF ENFORCING RECOVERIES OF MONEY OTHERWISE THAN BY LEVYING AN ELEGIT OR FIERI FACIAS.

SEC.

1. Where when this act takes effect a person is in execution or the bounds or has given bail.

SEC.

2. No *ca. sa.* to be issued or executed hereafter, except in cases provided for by preceding section.

- | SEC. | SEC. |
|---|---|
| 3. How lien may be acquired on debtor's whole personal estate. | court's order on such examination; execution thereon. |
| 4. Lien terminated by a forfeited forthcoming bond, or by a <i>supersedeas</i> or other legal process. | 12. If he fail to appear, or to disclose his liability, proceedings thereupon. |
| 5. } How judgment debtor may be | 13. Person summoned may before return day of summons deliver to |
| to } compelled to discover and sur- | or pay officer; duty of officer in |
| 7. } render his estate. | such case. |
| 8. Court in which judgment is may take order for sale and proper application of debtor's estate. | 14. Judgment as to costs. |
| 9. Officer's duty as to sale, collection and disposition of debtor's estate; when he is to return to clerk's office evidences of debt; penalty for failure. | 15. By whom and how suit may be brought for the recovery of estate on which <i>fi. fa.</i> or the judgment on which it issues is a lien, or for the enforcement of any liability in respect to such estate. |
| 10. When by lien of <i>fi. fa.</i> there is a claim on any person other than judgment debtor, summons may be sued out against him; how issued and returned. | 16. Officer receiving money under this chapter to make return thereof and pay nett proceeds; how liable if failure to do either. |
| 11. How such person is examined; | 17. As to creditor's right to issue other executions. |

Where debtor has given bail, or is in bounds or execution.

§ 1. If under a judgment rendered before this chapter takes effect, a person shall, at the time it takes effect, be in execution, or have the benefit of the prison rules or bounds, the judgment creditor may proceed against such person, and the sureties in the bounds bond, according to the laws in force on the day before the commencement of this act; and if there be judgment before or after such commencement, in a case wherein the judgment creditor may proceed against the bail of any person, a writ of *capias ad satisfaciendum* may be sued out against and executed on such person. In any case under this section, the person in execution, or having the benefit of such rules or bounds, may be discharged, and his estate subjected and applied according to the said laws.

§ 2. No writ of *capias ad satisfaciendum* shall be issued or executed hereafter,* except in the cases provided for by the preceding section.

* By chapters 186 and 187 there is such an enlargement of the remedies against the debtor's real estate, that the whole may be subjected to his debts, without a *ca. sa.* Under chapter 187, all the debtor's goods and chattels may be taken under a *fi. fa.* Against such estate of the debtor as cannot be subjected under chapters 186 and 187, remedies are provided in this chapter. They are in lieu of those provided by the acts in 1 R. C. p. 528, § 8 to 11; p. 534, 5, § 28, 30; p. 536, § 31 to 41; p. 547, ch. 135; p. 548, ch. 133; p. 235, § 35; p. 251, § 18; 1820-21, p. 34, ch. 34, § 4; 1822-3, p. 32, § 5; 1827-8, p. 25, ch. 32; 1833-4, p. 77, ch. 66; 1843-4, p. 57, ch. 73; 1845-6, p. 62, § 84; 1847-8, p. 81, ch. 107. As to the process in lieu of the *capias ad respondendum*, see ante, p. 643, note to § 5 of ch. 170. The revisors (at page 843 of their reports) concluded their remarks on this subject in these terms: "We will not undertake to say that the remedies now proposed to be substituted in the place of process to take the body for debt, will, in every possible case, attain for the creditor every thing that he can now attain by means of that process; but we express the opinion, without hesitation, that in cases generally, the rights of creditors will be better protected by the measures proposed than by those for which they are substituted; at the same time that we get rid of the system of imprisonment for debt, which is regarded by so many as inconsistent with the liberal and enlightened spirit of the age."

How lien may be acquired on debtor's whole personal estate.

§ 3. Every writ of *fiери facias* hereafter issued, shall, in addition to the effect which it has under chapter one hundred and eighty-seven, be a lien from the time that it is delivered to a sheriff or other officer, to be executed, upon all the personal estate of, or to which the judgment debtor is possessed or entitled, (although not levied on, nor capable of being levied on, under that chapter,) except in the case of a husband or parent such things as are exempt from distress or levy by the thirty-fourth section of chapter forty-nine, and except that as against an assignee of any such estate for valuable consideration, or a person making a payment to the judgment debtor, the lien by virtue of this section shall be valid only from the time that he has notice thereof. This section shall not impair a lien acquired by an execution creditor under chapter one hundred and eighty-seven.

1 and 2 Vict. ch. 10, § 12, 14, 15.

1 R. C. p. 529, § 13.

1836-7, p. 47, ch. 69, § 3.

6 Rand, 735.

See ante, p. 252, ch. 49, § 34.

By what bond or legal process lien is terminated.

§ 4. The lien acquired under the preceding section shall cease whenever the right of the judgment creditor to levy the *fiери facias*, under which the said lien arises, or to levy a new execution on his judgment, ceases or is suspended by a forthcoming bond being given and forfeited, or by a *supersedeas* or other legal process.

How debtor compelled to discover and surrender his estate.

§ 5. To ascertain the estate on which a writ of *fiери facias* is a lien, and to ascertain any real estate in or out of this state, to which a debtor named in such *fiери facias* is entitled, the judgment creditor may file interrogatories to the debtor, and a copy of the judgment, with a commissioner of a circuit, county or corporation court, who shall issue a summons, as in the cases provided for by the thirty-eighth section of chapter one hundred and seventy-six, except that it shall not be served out of the county or corporation in which the commissioner resides. The debtor served with such summons shall, within the time prescribed therein, file answers upon oath to said interrogatories. If he fail so to do, or file answers which are deemed by the commissioner, or alleged by the creditor, his agent or attorney, to be evasive, the commissioner shall make report thereof to the court by which he is appointed; and said court, after service of a notice to or rule upon the debtor to shew cause against it, may attach him and compel him to answer, either in court or before the commissioner, the same or any other interrogatories which it deems pertinent.

1 R. C. p. 536, § 31.

Ante, p. 667, 668, ch. 176, § 38.

§ 6. Any real estate out of this state, to which it may appear by such answers the debtor is entitled, shall be forthwith conveyed by him to the officer to whom was delivered the said *fiери facias*; and any money, bank notes, securities, evidences of debt or other personal estate, which it may ap-

1 R. C. p. 537, § 31.

1820-21, p. 34, ch. 34, § 3.

pear by such answers are in the possession or under the control of the debtor, shall be delivered by him, as far as practicable to the same officer, or to such other, and in such manner as may be ordered by the court, when the answers are in court, or by the commissioner, when the answers are not in court. Unless such conveyance and delivery be made, a writ shall be issued by the court's order, or if the answers be not in court, by the commissioner, directed to the sheriff of any county or the sergeant of any corporation, requiring such sheriff or sergeant to take the debtor and keep him safely until he shall make such conveyance and delivery; upon doing which he shall be discharged by the court under whose order the writ issued, or if the answers were not in court, by the court by which the commissioner was appointed, or in either case, if the court be not sitting, by the commissioner.

§ 7. The commissioner shall return the interrogatories and answers filed with him, and a report of the proceedings under the two preceding sections, to the court in which the judgment is, or if the judgment be of a justice, to the court to which such justice belongs.

As to recovery, sale and application of debtor's estate.

§ 8. Any order may be made by such court which it may deem right, as to the sale and proper application of the estate conveyed and delivered under the two preceding sections.

1 R. C. p. 370, § 34; p. 538, § 34, 37.
1820-21, p. 24, ch. 34, § 3.
1829-30, p. 22, ch. 15.
1847-8, p. 61, ch. 90, § 1.

6 Rand. 735.

§ 9. Real estate conveyed to an officer under this chapter, shall, unless such court direct otherwise, be sold after such notice as in the case of slaves levied on, and be conveyed to the purchaser by the officer or his deputy. An officer to whom there is delivery under this chapter, when the delivery is of money, bank notes, or any goods or chattels, shall dispose of the same as if levied on by him under a *fieri facias*; and when the delivery is of evidences of debts, (other than such bank notes,) may receive payment of such debts within sixty days after such delivery. Any evidence of debt or other security remaining in his hands at the end of said sixty days, shall be returned by him to the clerk's office of the court in which the judgment is. For a failure to make such return, he may be proceeded against as if an express order of said court for such return had been disobeyed.

1 R. C. p. 538, § 35.

6 Rand. 735.

§ 10. On a suggestion by the judgment creditor that by reason of the lien of his writ of *fieri facias*, there is a liability on any person other than the judgment debtor, a summons may be sued out of the said office against said person to answer such suggestion; the return day of which summons may be the next term of the court, although more than ninety days after the date of the summons.

Id.

§ 11. The person summoned shall be examined on oath. If it appear on such examination that there is any such liability on him, the court may order him to pay any debts, or

deliver any estate for which there is such liability, or pay the value of such estate, to any officer whom it may designate; and the levy of an execution on such order shall be valid, although levied by such officer.

§ 12. If such person, after being served with the summons twenty days, fail to appear, or if it be suggested that he has not fully disclosed his liability, the proceedings shall be according to the eighteenth and nineteenth sections of chapter one hundred and fifty-one, *mutatis mutandis*. 1 R. C. p. 538, § 35. 1841-2, p. 54, ch. 76. See ante, p. 605, ch. 151, § 18, 19.

§ 13. Any person summoned under the tenth section, may, before the return day of the summons, deliver and pay to the officer serving it, what he is liable for; and the officer shall give a receipt for, and make return of, what is so paid and delivered. 1 R. C. p. 539, § 37, 39.

§ 14. Unless such person appear to be liable for more than is so delivered and paid, there shall be no judgment against him for costs. In other cases, judgment under the eleventh and twelfth sections may be for such costs, and against such party, as the court may deem just. Id. 1833-4, p. 77, ch. 67, § 2.

§ 15. For the recovery of any estate, real or personal, on which a writ of *fiery facias* is a lien under this chapter, or on which the judgment on which such writ issues, is a lien under chapter one hundred and eighty-six, or for the enforcement of any liability in respect to any such estate, a suit may be maintained at law or in equity, as the case may require, in the name of the officer to whom such writ was delivered, or in the name of any other officer who may be designated for the purpose by an order of the court in which the judgment is. No officer shall be bound to bring such suit, unless bond with sufficient security be given him to indemnify him against all expenses and costs which he may incur or become liable for by reason thereof. But any person interested may bring such suit at his own costs in the officer's name. 1 R. C. p. 539, § 36. 1 and 2 Vict. ch. 10, § 12.

§ 16. An officer receiving money under this chapter shall, within thirty days after receiving it, make return thereof to the court or the clerk's office of the court in which the judgment is, and for failing so to do, shall be liable as if he had acted under an order of said court. After deducting from said money a commission of five *per cent.* and his necessary expenses and costs, including reasonable fees to counsel, he shall pay the nett proceeds, and he and his sureties and their representatives shall be liable therefor, in like manner as if the same had been made under a writ of *fiery facias* on the judgment, returnable at the end of said thirty days. 1 R. C. p. 533, § 34, 35; p. 539, § 3, 8, 39, 41. 1829-30, p. 22, ch. 15.

As to creditor's right to issue other executions.

§ 17. Although a judgment creditor avail himself of the benefit of this chapter, he may nevertheless (without impairing his lien under it) from time to time, according to chapters one hundred and eighty-six and one hundred and eighty-seven, issue other executions upon his judgment until the same be satisfied. 1 R. C. p. 538, § 33. 1837-8, p. 25, § 2. 1845-6, p. 62, ch. 84, § 1.

CHAPTER CLXXXIX.

OF FORTHCOMING BONDS.*

SEC

1. When and how a forthcoming bond may be taken; property then remains in debtor's possession.
2. If bond be forfeited, where it is to be returned, and when; its effect; clerk's duty to endorse time of return.
3. Liability of obligors; how recovery on the bond.

SEC.

4. Where taken under distress warrant, what defence may be made.
5. Remedy of creditor if bond be quashed.
6. In what cases forthcoming bond not to be taken.
7. What endorsement clerk to make on execution in such cases.

1 R. C. p. 530,
§ 16, 19.
1841-2, p. 53, ch.
93, § 1.

§ 1. The sheriff or other officer levying a writ of *fieri facias*, or distress warrant, may take from the debtor a bond with sufficient surety, payable to the creditor, reciting the service of such writ or warrant, and the amount due thereon, (including his fee for taking the bond, commission and other lawful charges, if any,) with condition that the property shall be forthcoming at the day and place of sale. Whereupon such property may be permitted to remain in the possession and at the risk of the debtor.

1 R. C. p. 530,
§ 16.

§ 2. If the condition of such bond be not performed, the officer, unless payment be made of the amount due on the execution or warrant, (including his fee, commission and charges as aforesaid,) shall, within thirty days after the bond is forfeited, return it, with the execution or warrant, to such court or the clerk's office of such court as is prescribed by the twenty-eighth section of chapter forty-nine. The clerk shall endorse on the bond the date of its return, and against such of the obligors therein, as may be alive when it is forfeited and so returned, it shall have the force of a judgment. But no execution shall issue thereon under this section.

See ante, p. 251,
ch. 49, § 28.

1 R. C. p. 530,
§ 16.
1819-20, p. 17, ch.
19, § 3.
1820-21, p. 35, ch.
35, § 2.
1821-2, p. 20, ch.
18, § 1.
1842-3, p. 48, ch.
71, § 2.
See ante, p. 639,
ch. 167, § 4.

§ 3. The obligors in such forfeited bond shall be liable for the money therein mentioned, with interest thereon from the date of the bond till paid, and the costs; the obligee or his personal representative, shall be entitled to recover the same by action or motion.

* As to the terms of the bond, see 1 Wash. 69, 161, 254, 259; 1 Call 49; 2 Call 290; 2 H. & M. 398; 1 Munf. 605; 2 Munf. 266; 4 Munf. 380; 1 Leigh 306, 442; 3 Leigh 392; 8 Leigh 588; 9 Leigh 308; 10 Leigh 490.

Where without security, 3 Call 13, or sufficient security, 1 Rob. 545, 6.

Its effect upon the lien of the *fieri facias*, 3 Munf. 417; and upon the original judgment, 1 Wash. 92; 2 Wash. 189; 3 Rand. 490; 1 Rob. 545; 2 Grat. 178, 419. Force of bond as a judgment, 4 Leigh 305. As to non-performance of condition, 1 Wash. 330. Insufficient performance by partial delivery of property, 1 Wash. 273; or partial payment, 3 Rand. 522.

When performance of condition unnecessary, 6 Munf. 181.

Power of court to quash the bond, 2 Wash. 189; 1 Rob. 545.

Record before appellate court, 1 H. & M. 211; 1 Munf. 605; 2 Munf. 266; 4 Munf. 380.

Where judgment overruling motion on bond is reversed, as to judgment of appellate court, 1 Wash. 161; 4 Munf. 380.

Right to maintain action on the bond, 3 Call 523; 1 Wash. 367, 8; 1 Call 243, 249.

§ 4. In an action or motion on such bond, when it is taken under a distress warrant, the defendants may make defence on the ground that the distress was for rent not due in whole or in part, or was otherwise illegal.

§ 5. If any such bond be at any time quashed, the obligee, besides his remedy against the officer, may have such execution on his judgment, or issue such distress warrant, as would have been lawful if such bond had not been taken. ^{1 R. C. p. 531, § 17.}

§ 6. No bond for the forthcoming of property shall be taken on an execution on a forthcoming bond, nor on an execution on a judgment against a sheriff, sergeant, coroner or constable, or a deputy of any of them, or a surety or personal representative of any such officer or deputy, for money received by any such officer or deputy, by virtue of his office, or against any such officer or his personal representative, in favour of a surety of such officer, or against a deputy of any such officer, or his surety or personal representative, in favour of his principal or the personal representative of such principal, for money paid or a judgment rendered for a default in office; nor on an execution against an overseer of the poor, or his personal representative, for money received by him as such; nor on any other execution on which the clerk is required by law to endorse that "no security is to be taken." ^{Id. § 16, 20.}

§ 7. On every execution on which a forthcoming bond is prohibited from being given, the endorsement that "no security is to be taken," shall be made by the clerk. ^{1 R. C. p. 532, § 16, 20.}

Title 54.

CRIMES AND PUNISHMENTS.

- CHAP. 190. Of offences against the sovereignty of the state.
 191. Of homicide, and other offences against the person.
 192. Of offences against property.
 193. Of forgery.
 194. Of offences against public justice.
 195. Of offences against the peace.
 196. Of offences against morality and decency.
 197. Of offences against public health.
 198. Of offences against public policy.
 199. General provisions concerning crimes and punishments.
 200. Of offences by negroes.

CHAPTER CXC.

OF OFFENCES AGAINST THE SOVEREIGNTY OF THE STATE.

SEC.

1. Treason defined; how proved and punished.
2. Of misprision of treason.

SEC.

3. Attempting, or instigating others, to establish, usurped government.
4. Advising or conspiring with slave, to rebel, &c.

9 Hen. Stat. p.
168, ch. 3, § 1.
1 R. C. p. 590, l.
ch. 162, § 1, 2.
1847-8, p. 94, ch.
2, § 1, 3.

§ 1. Treason shall consist only in levying war against the state, or adhering to its enemies, giving them aid and comfort, or establishing, without authority of the legislature, any government within its limits, separate from the existing government, or holding or executing, in such usurped government, any office, or professing allegiance or fidelity to it, or resisting the execution of the laws, under colour of its authority; and such treason, if proved by the testimony of two witnesses to the same overt act, or by confession in court, shall be punished with death.

1847-8, p. 94, ch.
2, § 2.

§ 2. If a free person, knowing of any such treason, shall not, as soon as may be, give information thereof to the governor, or some conservator of the peace, he shall be punished by fine not exceeding one thousand dollars, or by confinement in the penitentiary not less than three nor more than five years.

12 Hen. Stat. p.
41, ch. 10, § 1, 2,
3.

1 R. C. p. 591, § 3.
1847-8, p. 94, § 4.
See ante, p. 103,
ch. 17, § 2.

§ 3. If a free person attempt to establish any such usurped government, and commit any overt act therefor, or, by writing or speaking, endeavour to instigate others to establish such government, he shall be confined in jail not exceeding twelve months, and fined not exceeding one thousand dollars.

1847-8, id. § 5.

§ 4. If a free person advise or conspire with a slave to rebel or make insurrection, or with any person, to induce a slave to rebel or make insurrection, he shall be punished with death, whether such rebellion or insurrection be made or not.

CHAPTER CXCI.

OF HOMICIDE AND OTHER OFFENCES AGAINST THE PERSON.

SEC.		SEC.	
1. } 2. } 3. }	Definition and punishment of murder.	18.	Injuries by drivers, &c., of public conveyances.
4. } 5. }	Punishment of manslaughter.		<i>Duelling.</i>
6.	How and where homicide prosecuted and punished, if death occur without the state.	19. } 20. } 21. }	By previous agreement in this state, being engaged in a fatal duel out of the state; how and where prosecuted and punished.
7. } 8. }	Attempt to poison or produce abortion.	22. } 23. }	For being engaged in a duel, when death does not occur; or for accepting or carrying a challenge or advising a duel.
9.	Shooting, stabbing, &c., with intent to kill, maim, &c.	24.	When party leaves the state to evade the law and engages in a duel.
10.	Shooting, &c., in committing or attempting a felony.	25.	Plea of former conviction or acquittal.
11.	Shooting in a place of public resort.	26.	For posting or upbraiding another for not being engaged in a duel.
12. } 13. }	Robbery, extorting money, &c.	27.	Duty of a justice having cause to suspect a duel is about to be fought.
14. } 15. }	Rape; carnal knowledge of female child; or abduction of white female.		
16. } 17.	Kidnapping.		

Homicide and poisoning.

§ 1. Murder by poison, lying in wait, imprisonment, starving, or any wilful, deliberate and premeditated killing, or in the commission of, or attempt to commit arson, rape, robbery or burglary, is murder of the first degree. All other murder is murder of the second degree.*

§ 2. Murder of the first degree shall be punished with death.

§ 3. Murder of the second degree, by a free person, shall be punished by confinement in the penitentiary not less than five nor more than eighteen years.

§ 4. Voluntary manslaughter, by a free person, shall be punished by confinement in the penitentiary not less than one nor more than five years.

§ 5. Involuntary manslaughter, by a free person, shall be a misdemeanor.

§ 6. If a person be stricken or poisoned in, and die, by reason thereof, out of this state, the offender shall be as guilty, and be prosecuted and punished, as if the death had occurred in the county or corporation in which the stroke or poison was given or administered.

§ 7. If any free person administer, or attempt to administer, any poison or destructive thing in food, drink, medicine, or otherwise, or poison any spring, well or reservoir of water, with intent to kill or injure another person, he shall be confined in the penitentiary not less three, nor more than five years.

* See 1 Va. Cas. 10, 310; 2 Va. Cas. 70, 78, 111, 387, 483; 6 Rand. 721; 1 Leigh 598; 8 Leigh 745; 11 Leigh 681; 2 Rob. 772; 3 Grat. 594; 5 Grat. 660.

1847-8, p. 96,
ch. 3, § 9.
1 Vict. ch. 85, § 6.

§ 8. Any free person who shall administer to, or cause to be taken, by a woman, any drug or other thing, or use any means, with intent to destroy her unborn child, or to produce abortion or miscarriage, and shall thereby destroy such child, or produce such abortion or miscarriage, shall be confined in the penitentiary not less than one, nor more than five years. No person, by reason of any act mentioned in this section, shall be punishable where such act is done in good faith, with the intention of saving the life of such woman or child.

Shooting, stabbing, robbery, or extorting money.

1 R. C. p. 582,
ch. 156, § 1, 2.
1847-8, p. 96,
§ 10.

1 Vict. ch. 85,
§ 3, 4, 5.
1 Va. Cas. 184.
2 Va. Cas. 198,
231, 379.
5 Rand. 660.

§ 9. If any free person maliciously shoot, stab, cut or wound any person, or by any means cause him bodily injury, with intent to maim, disfigure, disable or kill, he shall, except where it is otherwise provided, be punished by confinement in the penitentiary not less than one, nor more than ten years. If such act be done unlawfully, but not maliciously, with the intent aforesaid, the offender shall, at the discretion of the jury, if the accused be white, or of the court, if he be a negro, either be confined in the penitentiary not less than one nor more than five years, or be confined in jail not exceeding twelve months, and fined not exceeding five hundred dollars.

1847-8, p. 97.
§ 18.

§ 10. If any free person, in the commission of, or attempt to commit, a felony, unlawfully shoot, stab, cut or wound another person, he shall, at the discretion of the jury, if the accused be white, or of the court, if he be a negro, either be confined in the penitentiary not less than one, nor more than five years, or be confined in jail not exceeding one year, and fined not exceeding five hundred dollars.

1846-7, p. 67,
ch. 79.

§ 11. If a free person unlawfully shoot at another person, in any street in a town, or in any place of public resort, whether in a town or elsewhere, he shall be confined in jail not less than six months, nor more than three years, and be fined not less than one hundred, nor exceeding one thousand dollars.

1 R. C. p. 617,
§ 5.
1819-20, p. 18,
ch. 20.
1847-8, p. 96,
§ 11, 12.
1 Vict. ch. 87,
§ 2, 3, 5, 6, 7, 12.

§ 12. If any free person commit robbery, being armed with a dangerous weapon, he shall be confined in the penitentiary not less than five nor more than ten years; if not so armed, he shall be confined therein not less than three nor more than ten years.

1847-8, p. 96, § 13.
1 Vict. ch. 87, § 4.
10 & 11 Vict. ch.
66, § 1, 2.

§ 13. If any free person threaten injury to the character, person or property of another person, or to accuse him of any offence, and thereby extort money or pecuniary benefit, he shall be confined in the penitentiary not less than one nor more than five years.

1847-8, p. 96, § 14.
9 Geo. iv. ch. 31,
§ 21.

§ 14. If any free person seize, take or secrete a child from the person having lawful charge of such child, with intent to extort money or pecuniary benefit, he shall be confined in the penitentiary not less than one nor more than five years.

Rape, abduction and kidnapping.

§ 15. If any white person carnally know a female of the age of twelve years or more, against her will, by force, or carnally know a female child under that age, he shall be confined in the penitentiary not less than ten nor more than twenty years.

1 R. C. p. 585, ch. 158, § 1, 2.
1847-8, p. 97, § 15.
9 Geo. iv. ch. 31, § 17.
1 Va. Cas. 307.
2 Va. Cas. 235.

§ 16. If any white person take away or detain, against her will, a white female, with intent to marry or defile her, or cause her to be married or defiled by another person, or take from any person, having lawful charge of her, a female child under twelve years of age, for the purpose of prostitution or concubinage, he shall be confined in the penitentiary not less than three nor more than ten years.

1 R. C. p. 401, 2, ch. 106, § 24, 25.
1847-8, p. 97, § 16.
9 Geo. iv. ch. 31, § 19, 20.
5 Rand. 628.

§ 17. If any free person sell a free person as a slave, or kidnap a free person with intent to use or sell him as a slave, knowing him to be free, he shall be confined in the penitentiary not less than three nor more than ten years.

1 R. C. p. 427, § 28.
1847-8, p. 97, § 19.
2 Va. Cas. 144.
1 Leigh 588.
11 Leigh 636.

Injury in public conveyance.

§ 18. If any driver, conductor or captain of any vehicle or boat for public conveyance, being free, shall, in the management of such vehicle or boat, wilfully or negligently inflict bodily injury on any person, he shall be punished as for a misdemeanor.

1847-8, p. 97, § 20.

Duelling.

§ 19. If any free person, resident in this state, by previous agreement made within the same, fight a duel without the state, and in so doing inflict a mortal wound, he shall be deemed guilty of murder in this state.

1809-10, p. 9, ch. 10.
1 R. C. p. 584, § 6.
1830-31, p. 103, ch. 37, § 1.
1847-8, p. 97, 8, § 21, 23.

§ 20. If any free person, resident in this state, by like agreement, be the second of either party in such duel as is mentioned in the preceding section, and be present as such, when such mortal wound is inflicted, he shall be deemed an accessory before the fact, to the crime of murder in this state.

1 R. C. Id.
1830-31, Id. § 6.
1847-8, Id. § 22, 24.

§ 21. An offender, under either of the two preceding sections, may be prosecuted in the county or corporation in which the death occurs, if it occur within this state; and if not, in any county or corporation in which such offender may be found.

Id. p. 97, § 21 to 24.

§ 22. If any free person fight a duel, with any deadly weapon, though no death ensue, or send or deliver to another a challenge, or message intended to be a challenge, oral or written, to fight a duel, though no duel ensue, he shall be confined in jail not more than one year and be fined not exceeding one thousand dollars.

Id. p. 98, § 25.
2 Va. Cas. 516.
9 Leigh 603.

§ 23. And if any free person accept, or knowingly carry or deliver, any such challenge or message, or advise, encourage

1847-8, p. 98, ch. 3, § 26.

or promote such duel, he shall be confined in jail not more than six months and fined not exceeding five hundred dollars.

1847-8, p. 98, ch.
3, § 27.
2 Va. Cas. 172.

§ 24. If any free person, resident in this state, leave the same for the purpose of eluding the provisions herein contained, respecting duelling or challenges to fight, and without the state engage in a duel (though no death ensue) or challenge another, or send or deliver a message, intended to be a challenge to fight such duel, or accept, or knowingly carry or deliver any such challenge or message, or be present at the fighting of such a duel, with deadly weapons, as an aid, second or surgeon, or advise, encourage or promote such duel, he shall be deemed as guilty and subject to the like punishment, as if the offence had been committed in this state.

Id. § 28.

§ 25. A person indicted in this state under the nineteenth, twentieth, twenty-first, or twenty-fourth section, may plead his conviction or acquittal of the same offence in another state, in bar of such indictment.

Id. § 29.

§ 26. If any free person post another, or, in writing or in print, use any reproachful or contemptuous language to or concerning another, for not fighting a duel, or for not sending or accepting a challenge, he shall be confined in jail not more than six months, or fined not exceeding one hundred dollars.

1 R. C. p. 584, § 5.
1830-31, p. 104,
ch. 37, § 5.
1847-8, p. 98, § 30.

§ 27. If any justice or judge have good cause to suspect, that any persons are about to be engaged in a duel, he may issue his warrant to bring them before him, and if he think proper to take from them a recognizance to keep the peace, he shall insert therein a condition, that they will not, during the time for which they may be bound, be concerned in a duel directly or indirectly.

CHAPTER CXCII.

OF OFFENCES AGAINST PROPERTY.

SEC.	SEC.
1. Burning dwelling-house, jail or prison, at night.	11. Of burglary.
2. Burning such house in the day time.	12. Entering dwelling or other house or a vessel, with intent to commit robbery, rape or murder.
3. What not deemed a dwelling-house.	13. As to same act, done with intent to commit larceny or any felony.
4. } Burning certain other houses, or	14. Grand larceny and petit larceny.
5. } piles of wood, or stacks of	15. } Stealing writings or book of ac-
6. } wheat, &c.	16. } counts; how value thereof esti-
6. Burning any house not previously mentioned.	17. Larceny may be of things fixed to the freehold.
7. Burning a bridge, dam, &c., or a vessel.	18. Stealing a slave.
8. Setting fire to fences, &c., capable of spreading fire.	19. Receiving stolen goods, deemed larceny; when and how prosecuted.
9. Intentionally setting fire to woods.	20. } Embezzlement by officers or other
10. Wilfully burning property with intent to injure an owner.	21. } persons.

SEC.		SEC.	
22.	Fraudulent entries in accounts by officers and clerks.	29.	Destroying or concealing a will.
23.	Taking or selling planted oysters of another.	30.	Obtaining money, &c., by false pretences.
24.	Carrying away slave with fraudulent intent. What evidence of such carrying off.	31.	Wilfully destroying a vessel.
25.		32.	Poisoning horse, &c., of another.
26.	Master of vessel receiving runaway slave. What evidence of offence.	33.	Injuring canal, railroad, &c.
27.	Advising or aiding escape of slave, or permitting him to pass ferry or bridge.	34.	Unlawfully, without felony, injuring any property, or removing monument or corner tree, &c.
28.			

*Burning houses and other property.**

§ 1. If any free person, in the night, maliciously burn the dwelling-house of another, or any jail or prison, or maliciously set fire to any thing, by the burning whereof such dwelling-house, jail or prison, shall be burnt in the night, he shall be punished with death; but if the jury find, that, at the time of committing the offence, there was no person in the dwelling-house, jail or prison, the offender shall be confined in the penitentiary not less than five nor more than ten years.

1 R. C. p. 587,
ch. 160, § 1.
1845-6, p. 65, ch.
90.
1847-8, p. 99, § 1.
5 Grat. 664.

§ 2. If any free person, in the day time, maliciously burn the dwelling-house of another, or any jail or prison, or maliciously set fire to any building or other thing, by the burning whereof such dwelling-house, jail or prison, shall be burnt, he shall be confined in the penitentiary not less than three nor more than ten years.

1847-8, p. 99, § 2.

§ 3. No out-house, not adjoining a dwelling-house, nor under the same roof, (although within the curtilage thereof,) shall be deemed parcel of such dwelling-house within the meaning of this chapter, unless some person usually lodge therein at night.

Id. § 3.

§ 4. If a free person maliciously burn any meeting-house, courthouse, town-house, college, academy or other building erected for public use, (except a jail or prison,) or any banking-house, warehouse, storehouse, manufactory, or mill of another person, not usually occupied by persons lodging therein at night, or if he maliciously set fire to any thing, by the burning whereof any building mentioned in this section shall be burnt, he shall be confined in the penitentiary, when such building, with the property therein, is of the value of one thousand dollars, not less than three nor more than ten years; and when it is of less value, not less than three nor more than five years.

1 R. C. p. 587,
ch. 160, § 2.
1847-8, p. 99, § 4.
5.

§ 5. If a free person maliciously burn any pile or parcel of wood, boards or other lumber, or any barn, stable, cow-house, tobacco-house, stack of wheat, or other grain, or of fodder, straw or hay, he shall, if the thing burnt with the property therein be of the value of one hundred dollars, be confined in

1 R. C. Id. § 3.
1847-8, Id. § 6.

* Recent English statutes are 1 Vict. ch. 89; 7 and 8 Vict. ch. 62; 9 and 10 Vict. ch. 25.

the penitentiary not less than three nor more than five years; and if it be of less value, he shall be so confined not less than one nor more than three years, or in the discretion of the jury, if the accused be white, or of the court if he be a negro, in jail not more than one year, and be fined not exceeding five hundred dollars.

1 R. C. p. 587, ch.
160, § 2, 4.
1847-8, p. 99, § 7.
4 Leigh 683.

§ 6. If a free person maliciously burn any building, the burning whereof is not punishable under any other section of this chapter, he shall, if the building with the property therein be of the value of one hundred dollars or more, be confined in the penitentiary not less than three nor more than ten years; and if it be of less value, be so confined not less than one nor more than three years, or in the discretion of the jury, if the accused be white, or of the court if he be a negro, in jail not more than one year, and be fined not exceeding five hundred dollars.

1826-7, p. 28, ch.
30, § 1.
1842-3, p. 64, ch.
95.
1847-8, p. 100, § 8.

§ 7. If a free person maliciously burn any bridge, lock, dam, or any ship, boat or other vessel, of the value of one hundred dollars or more, he shall be confined in the penitentiary not less than three nor more than ten years; and if the value be less than one hundred dollars, he shall be confined in jail not exceeding one year, and fined not exceeding two hundred dollars.

1834-5, p. 46, ch.
65.
1847-8, p. 100, § 9.

§ 8. If any free person unlawfully and maliciously set fire to any woods, fence, grass, straw or other thing capable of spreading fire on lands, he shall be fined not exceeding one hundred dollars, and confined in jail not less than two nor more than twelve months.

2 R. C. p. 313, ch.
253.
1847-8, p. 100,
§ 10.

§ 9. If any free person intentionally set any woods on fire, whereby damage is done to the property of another, he shall be amerced at the discretion of a jury.

1847-8, p. 100,
§ 11.

§ 10. If a free person wilfully burn any building, or any goods or chattels, which shall be at the time insured against loss or damage by fire, with intent to injure the insurer, whether such person be the owner of the property or not, he shall be confined in the penitentiary not less than one nor more than ten years.

Burglary, larceny, embezzlement, &c.

1 R. C. p. 617, ch.
171, § 5.
1819-20, p. 18, ch.
20.
1847-8, p. 100,
§ 12.
4 Leigh 652.

§ 11. Any free person who shall be guilty of burglary, shall be confined in the penitentiary not less than five nor more than ten years. If a person break and enter the dwelling-house of another in the night time, with intent to commit larceny, he shall be deemed guilty of burglary, though the thing stolen or intended to be stolen be of less value than twenty dollars.*

1 R. C. p. 588, § 7.
2 R. C. p. 133, 4,
ch. 219, § 1.
1847-8, p. 100,
§ 13.

§ 12. If a free person shall, in the night, enter without breaking, or shall, in the day time, break and enter, a dwelling-house or an out-house adjoining thereto and occupied

* Recent English statute, 1 Vict. ch. 86.

therewith, or shall, in the night time, enter without breaking, or break and enter either in the day time or night time, any office, shop, storehouse, warehouse, banking-house, or other house, not adjoining to or occupied with a dwelling-house, or any ship or vessel within the jurisdiction of any county, with intent to commit murder, rape or robbery, he shall be confined in the penitentiary not less than three nor more than ten years.*

§ 13. If a free person do any of the acts mentioned in the preceding section, with intent to commit larceny or any felony other than murder, rape or robbery, he shall be confined in the penitentiary not less than one nor more than ten years, or at the discretion of the jury if the accused be white, or of the court if he be a negro, be confined in jail not less than one nor more than twelve months, and in the latter case, may also be punished, at the discretion of the court, with stripes.†

§ 14. If a free person commit simple larceny of goods or chattels, he shall, if they be of the value of twenty dollars or more, be deemed guilty of grand larceny, and be confined in the penitentiary not less than one, nor more than five years; and if they be of less value, be deemed guilty of petit larceny, and be confined in jail not exceeding one year, and at the discretion of the court, may be punished with stripes.

§ 15. If any free person steal any bank note, check, or other writing or paper of value, or any book of accounts for or concerning money or goods due or to be delivered, he shall be deemed guilty of larceny thereof, and receive the same punishment, according to the value of the thing stolen, that is prescribed for the punishment of larceny of goods or chattels.

§ 16. In a prosecution under the preceding section, the money due on or secured by the writing, paper or book, and remaining unsatisfied, or which in any event might be collected thereon, or the value of the property or money affected thereby, shall be deemed to be the value of the article stolen.

§ 17. Things which savour of the realty, and are at the time they are taken part of the freehold, whether they be of the substance or produce thereof or affixed thereto, shall be deemed goods and chattels, of which larceny may be committed, although there be no interval between the severing and taking away.

§ 18. If a free person steal a slave, he shall be confined in the penitentiary not less than two nor more than ten years.

§ 19. If any free person buy or receive from another person, or aid in concealing any stolen goods or other thing, knowing the same to have been stolen, he shall be deemed guilty of larceny thereof, and may be proceeded against, although the principal offender be not convicted.

§ 20. If any director or officer of any incorporated bank, or any officer of public trust in this state, or any officer, agent or

* Recent English statute, 1 Vict. ch. 86.

† Id.

1819-20, p. 19, ch. 22, § 2.
1847-8, p. 102, § 27. clerk of any other incorporated company, embezzle or fraudulently convert to his own use bullion, money, bank notes or other security for money, or any effects or property of another person, which shall have come to his possession, or been placed under his care or management, by virtue of his office, place or employment, he shall be deemed guilty of larceny thereof.*

2 R. C. p. 306, ch. 248, § 8.
1847-8, p. 102, § 28.
4 Grat. 532. § 21. If any carrier or other person, being free, to whom money or other property which may be the subject of larceny, may be delivered to be carried for hire, or any other person who may be entrusted with such property, embezzle or fraudulently convert to his own use, or secrete with intent to do so, any such property, either in mass or otherwise, before delivery thereof at the place at which, or to the person to whom, they were to be delivered, he shall be deemed guilty of larceny thereof.

1840-41, p. 87, ch. 77, § 8. § 22. If any officer or clerk of any bank or joint stock company make, alter, or omit to make, any entry in any account kept in such bank or by such company, with intent in so doing to conceal the true state of such account, or to defraud the said bank or company, or to enable or assist any person to obtain money to which he was not entitled, such officer or clerk shall be confined in the penitentiary not less than two nor more than ten years.

1846-7, p. 74, ch. 86, § 14.
1848-9, p. 80, § 12. § 23. If any person take or sell the planted oysters of another, otherwise than from the natural beds or shoals in the channel of a river or creek, he shall be fined not less than fifty nor more than one hundred dollars, and may, at the discretion of the court, be confined in jail not less than one nor more than six months.

Carrying away slaves; advising or aiding them to abscond.

1 R. C. p. 428, ch. 111, § 30.
1819-20, p. 26, ch. 32, § 1.
1833-4, p. 80, ch. 68, § 8.
1847-8, p. 102, § 22.
2 Leigh 741.
4 Leigh 692. § 24. Any free person who shall carry or cause to be carried out of any county or corporation any slave, without the consent of his owner, or of the guardian or committee of the owner, with intent to defraud or deprive the owner, of such slave, shall be prosecuted therefor in such county or corporation, and confined in the penitentiary not less than two nor more than ten years, and shall, moreover, (in lieu of damages,) forfeit to the owner double the value of the slave, and pay him all reasonable expenses incurred by him in regaining or attempting to regain such slave.

1 R. C. p. 428, § 31.
1833-4, p. 80, § 8.
1847-8, p. 102, § 23. § 25. Any master of a vessel having a slave on board, and going with him beyond the limits of any county, without the consent aforesaid, and any free person travelling by land, who shall aid any slave to escape out of any county or corporation, shall be considered as carrying off such slave, within the meaning of the preceding section.

* Recent English statute, 2 Will. iv. ch. 4.

§ 26. If the master or skipper of any vessel knowingly receive on board any runaway slave, and permit him to remain on board without proper effort to apprehend him, he shall be confined in the penitentiary not less than two nor more than five years; and if such slave be on board such vessel after leaving port, the master or skipper shall be presumed to have knowingly received him. 1833-4, p. 79, ch. 68, § 4.
1847-8, p. 102, § 24.

§ 27. If a free person advise any slave to abscond from his master, or aid such slave to abscond, by procuring for or delivering to him a pass, register or other writing, or furnishing him money, clothes, provisions or other facility, he shall be confined in the penitentiary not less than two nor more than five years. 1823-4, p. 37, ch. 35.
1828-9, p. 25, ch. 21, § 1.
1833-4, p. 80, ch. 68, § 6.
1847-8, p. 102, § 25.
8 Leigh 755.

§ 28. If any owner or keeper of a ferry or bridge across a water course separating this from another state, knowingly permit a slave to pass at such ferry or bridge without the consent of his master, he shall pay to the party injured twenty-five dollars, and all damages occasioned thereby; and if the slave, by so passing, escape, such owner or keeper shall moreover be confined in the penitentiary not less than one nor more than five years. 1834-5, p. 47, ch. 76.
1847-8, p. 102, § 26.

Destroying, &c., a will; obtaining money, &c., by false pretences.

§ 29. If a free person fraudulently destroy or conceal any will or codicil, with intent to prevent the probat thereof, he shall be confined in the penitentiary not less than two, nor more than five years. 1 R. C. p. 580, § 6.
1847-8, p. 103, § 29.

§ 30. If a free person obtain by any false pretence or token from any person, with intent to defraud, money or other property, which may be the subject of larceny, he shall be deemed guilty of the larceny thereof, or if he obtain, by any false pretence or token, with such intent, the signature of any person to a writing, the false making whereof would be forgery, he shall be confined in the penitentiary, not less than one nor more than five years, or at the discretion of the jury, if the accused be a white person, of the court if he be a negro, be confined in jail not more than one year, and be fined not exceeding five hundred dollars. 1 R. C. p. 577, ch. 153.
1844-5, p. 60, ch. 71.
1847-8, p. 103, § 30.
2 Va. Cas. 65.

Destroying or injuring property fraudulently or wilfully.

§ 31. If a free person wilfully, cast away or otherwise destroy a ship or vessel within any county, with intent to injure or defraud any owner thereof or of any property on board the same, or any insurer of the ship, vessel or property, or any part thereof, he shall be confined in the penitentiary not less than one nor more than five years.* 2 R. C. p. 133, 4.
1847-8, p. 103, § 31.

* See 1 Vict. ch. 89, § 4 to 8; and act of congress of 1804, in 2 Story's Laws U. S. p. 940, ch. 40.

1847-8, p. 103,
§ 32.

§ 32. If a free person maliciously administer poison to, or expose it with intent that it should be taken by, any horse, cattle or other beast of another person, he shall be confined in the penitentiary not less than one nor more than five years.

1826-7, p. 28, ch.
30, § 2.

1835-6, p. 48, ch.
72, § 2.

1836-7, p. 112, ch.
118, § 33.

1839, p. 58, ch. 90.

1842-3, p. 64, ch.
95.

1847-8, p. 103,
§ 33.

§ 33. If a free person maliciously obstruct, remove or injure any part of a canal or railroad, or any bridge or fixture thereof, or obstruct any machinery, work or engine thereof, whereby the life of any traveller, on such canal or road, is put in peril, he shall be confined in the penitentiary not less than three nor more than five years.

1822-3, p. 36, ch.
34, § 1.

1835-6, p. 48, ch.
72, § 1.

1836-7, p. 112, ch.
118, § 33.

1839, p. 59, § 2.

1841-2, p. 69, § 2.

1845-6, p. 65, ch.
91.

1846-7, p. 80, ch.
92, § 4.

1847-8, p. 103,
§ 34, 35.

§ 34. If a free person, unlawfully, but not feloniously, take and carry away, or destroy, deface or injure any property, real or personal, not his own, or break down, destroy, deface, injure or remove any monument erected for the purpose of designating the boundaries of any town, tract or lot of land, or any tree marked for that purpose, he shall be deemed guilty of a misdemeanor.*

CHAPTER CXCIIL.

OF FORGERY.†

SEC.

1. Forging records, &c.
2. Forging, or keeping an instrument for forging, a seal.
3. Forgery of coin and bank notes.
4. Making, or having in possession, any thing designed for forging any writing.

SEC.

5. Forging any writing not before specified.
6. Having in possession, knowingly, forged coin or bank notes.

1 R. C. p. 580,
ch. 154, § 4.
1847-8, p. 104,
ch. 5, § 1.
2 Rob. 836.

§ 1. If a free person forge a public record, or a certificate, return or attestation of a clerk of a court, public register, notary public, judge, justice, or any public officer, in relation to any matter wherein such certificate, return or attestation may be received as legal proof, or utter, or attempt to employ as true such forged record, certificate, return or attestation, knowing the same to be forged, he shall be confined in the penitentiary not less than two nor more than ten years.

1 R. C. p. 579,
§ 2.
1847-8, p. 104,
§ 2.

§ 2. If a free person forge, or keep or conceal any instrument, for the purpose of forging the seal of a court, or of any public office or body politic or corporate in this state, he shall be confined in the penitentiary not less than two nor more than ten years.

1 R. C. p. 578,
§ 1, 3.
1835-6, p. 46,
ch. 68.

§ 3. If a free person forge any coin, current by law or usage in this state, or any note or bill of a banking company, or fraudulently make any base coin, or a note or bill, purport-

* See 3 Leigh 809; 4 Leigh 675, 686; 8 Leigh 719; 11 Leigh 632; 2 Rob. 791.

† Recent English statute, 11 Geo. iv. and 1 Will. iv. ch. 66.

ing to be the note or bill of a banking company, when such company does not exist, or utter or attempt to employ as true such false, forged or base coin, note or bill, knowing it to be so, he shall be confined in the penitentiary not less than two nor more than ten years.

1838, p. 85,
ch. 109.
1847-8, p. 104,
ch. 5, § 3.
2 Va. Cas. 149,
356.
8 Leigh 734.
9 Leigh 627.

§ 4. If a free person engrave, stamp or cast, or otherwise make or mend, any plate, block, press or other thing adapted and designed for the forging and false making any writing or other thing, the forging or false making whereof is punishable by this act, or if such person have in his possession any such plate, block, press or other thing, with intent to use, or cause or permit it to be used in forging or false making any such writing or other thing, he shall be confined in the penitentiary not less than two nor more than ten years.

1 R. C. p. 578,
§ 4.
1834-5, p. 47,
ch. 66.
1847-8, p. 104, § 4.
1 Rob. 695.

§ 5. If a free person forge any writing, other than such as is mentioned in the first and third sections of this chapter, to the prejudice of another's right, or utter or attempt to employ as true such forged writing, knowing it to be forged, he shall be confined in the penitentiary not less than two nor more than ten years.

1 R. C. p. 579,
§ 3, 4.
1847-8, p. 104,
§ 5.
5 Leigh 708, 720,
2 Rob. 836.

§ 6. If a free person have in his possession forged bank notes, or pieces of forged or base coin, such as are mentioned in the third section of this chapter, knowing the same to be forged or base, with intent to utter or employ the same as true, he shall, if the number of such notes or pieces of coin in his possession, at the same time, be ten or more, be confined in the penitentiary not less than one nor more than five years, and if the number thereof be less than ten, be punished as for a misdemeanor.

1847-8, p. 104, § 6.

CHAPTER CXCIV.

OF OFFENCES AGAINST PUBLIC JUSTICE.

SEC.		SEC.	
1.	{ Of perjury; punishment for committing or procuring it.	17.	{ Extortion or fraudulently issuing fee bills for more than is allowed by law.
2.		18.	
3.		19.	Officer making false entry, or destroying &c. records of his office.
4.	{ Bribes to officers; for vote, opinion, &c.	20.	{ Persons convicted under two previous sections, disabled to hold office.
5.		21.	
6.	{ Bribes to officers, to prevent service of process, or influence their opinion or decision.	22.	{ Summoning or procuring juror to act partially.
7.		23.	
8.	Any person aiding escape of a prisoner.	24.	Cases in which courts and judges may punish for contempt.
9.	{ Officer permitting escape of prisoner, convicted or not.	25.	{ Limitation of such power, without a jury, and without a rule when party not present.
10.		26.	
11.	{ Prisoner escaping from jail, if convicted, or if not.	27.	{ Obstructing justice by threats or force.
12.			
13.	{ Officers and others refusing to execute or aid in executing process.		
14.			
15.	Persons failing to obey order of justice to prevent breach of the peace.		
16.	Concealing or compounding offences.		

Perjury and bribery.

1 R. C. p. 571,
ch. 148, § 1.
1847-8, p. 105, ch.
6, § 1.
10 Leigh 678.

§ 1. If a person, to whom an oath is lawfully administered on any occasion, shall on such occasion wilfully swear falsely touching any material matter or thing, he shall be guilty of perjury.

1 R. C. p. 571,
§ 1, 2.
1847-8, p. 105,
§ 2, 4.

§ 2. A free person who commits or procures another person to commit perjury, shall, if the perjury be on a trial for felony, be confined in the penitentiary not less than one nor more than ten years; and if it be on any other occasion, be confined in jail one year, and be fined not exceeding one thousand dollars.

Id.
See ante, p. 85,
ch. 12, § 4.

§ 3. He shall, moreover, on conviction thereof, be adjudged forever incapable of holding any post mentioned in the first section of chapter twelve, or of serving as a juror, or giving evidence as a witness.

1 R. C. p. 559, ch.
145, § 1, 2.
1847-8, p. 105,
§ 5, 6.

2 Wash. 88.
2 Va. Cas. 460.

§ 4. Any free person who shall corruptly give, offer or promise to any executive, legislative or judicial officer, after his election or appointment, and either before or after he shall have been qualified, or shall have taken his seat, any gift or gratuity, with intent to influence his act, vote, opinion, decision or judgment on any matter, question, cause or proceeding, which is or may be then pending, or may by law come or be brought before him in his official capacity, shall be confined in jail one year, and be fined not exceeding one thousand dollars.

Id.

§ 5. Any executive, legislative or judicial officer who shall, corruptly, accept any gift or gratuity, or any promise to make a gift, or do any act beneficial to such officer, under an agreement, or with an understanding that his vote, opinion or judgment shall be given in any particular manner upon a particular side of any question, cause or proceeding, which is, or may be by law, brought before him in his official capacity, or that in such capacity, he shall make any particular nomination or appointment, shall be confined in jail one year, and fined not exceeding one thousand dollars, and shall moreover forfeit his office, and be forever incapable of holding any post mentioned in the first section of chapter twelve.

1847-8, p. 108,
§ 20.

§ 6. If any officer authorized to serve legal process, receive any money or other thing of value for omitting, or delaying to perform any duty pertaining to his office, he shall be confined in jail not more than six months, and be fined not exceeding one hundred dollars.

1 R. C. p. 572,
ch. 148, § 3, 4.
1847-8, p. 106,
§ 7, 8.

§ 7. Any free person who gives or offers, or promises to give any money or other thing of value to a commissioner appointed by a court, auditor, arbitrator, umpire or juror, (although not empaneled,) with intent to bias his opinion or influence his decision in relation to any matter, in which he is acting or is to act; and any such commissioner, auditor, arbitrator, umpire or juror, who, corruptly, takes or receives such money or other thing, shall be confined in jail six months, and fined not exceeding five hundred dollars.

Escapes; failure to execute process; concealing or compounding offences.

§ 8. Where a person is lawfully detained as a prisoner in any jail, prison or custody, if a free person shall convey any thing into the jail or prison, with intent to facilitate the prisoner's escape therefrom, or shall, in any way, aid such prisoner to escape, or in the attempt to escape from such jail, prison or custody, or shall forcibly rescue, or attempt to rescue, him therefrom, such free person, if the rescue or escape be effected, shall, if the prisoner was detained on a conviction or charge of felony, be confined in the penitentiary not less than one nor more than five years, and if the same be not effected, or if the prisoner was not detained on such conviction or charge, be confined in jail six months, and fined not exceeding five hundred dollars. 1847-8, p. 106, § 9, 10.

§ 9. If a jailor or other officer voluntarily suffer a prisoner convicted of or charged with felony to escape from his custody, he shall be confined in the penitentiary not less than one nor more than five years. Id. § 11.

§ 10. If a jailor or other officer negligently suffer a person convicted of or charged with felony, or voluntarily or negligently suffer a person convicted of charged with an offence not a felony, to escape from his custody, or wilfully refuse to receive into his custody, any person lawfully committed thereto, he shall be confined in jail not more than six months, or be fined not exceeding five hundred dollars. Id. § 11, 12.

§ 11. A free person confined in jail on conviction of a criminal offence, who escapes thence by force or violence, shall be confined in the penitentiary one year, if previously sentenced to confinement therein, or be confined in jail six months, if previously sentenced to confinement in jail; the term of confinement under this section to commence from the expiration of the former sentence. 1 R. C. p. 595, ch. 165, 1847-8, p. 107, § 13.

§ 12. If a free person, lawfully imprisoned in jail and not sentenced on conviction of a criminal offence, escape from jail by force or violence, he shall be confined in jail not exceeding one year. Id. § 14.

§ 13. If any officer wilfully and corruptly refuse to execute any lawful process, requiring him to apprehend or confine a person convicted of or charged with an offence, or shall, wilfully and corruptly, omit or delay to execute such process, whereby such person shall escape and go at large, such officer shall be confined in jail not more than six months, and be fined not exceeding five hundred dollars. Id. § 1

§ 14. If a free person shall, on being required by any sheriff or other officer, refuse or neglect to assist him in the execution of his office in a criminal case, or in the preservation of the peace, or the apprehending or securing of any person for a breach of the peace, or in any case of escape or rescue, he shall be confined in jail not more than six months, and be fined not exceeding one hundred dollars. Id. § 16.

1847-8, p. 107,
§ 13.

§ 15. If a free person, being required by a justice on view of a breach of the peace or other offence, to bring before him the offender, shall refuse or neglect to obey the justice, he shall be punished as is provided in the preceding section for refusing to assist a sheriff; and if the justice declared himself to be such, or if he be known to the offender, ignorance of his office shall not be pleaded as an excuse.

1 R. C. p. 616,
ch. 170, § 2.
1847-8, p. 107,
§ 19.

§ 16. If a free person, knowing of the commission of an offence, take any money or reward, or an engagement therefor, upon an agreement or understanding, express or implied, to compound or conceal such offence, or not to prosecute therefor, or not to give evidence thereof, he shall, if such offence be felony, be confined in jail not more than one year, and fined not exceeding five hundred dollars; and if such offence be not a felony, unless it be punishable merely by a forfeiture to him, he shall be confined in jail not more than six months, and fined not exceeding one hundred dollars.

Extortion. Making false entry in, or embezzling or destroying a record.

1 R. C. p. 560, ch.
146.
1847-8, p. 108,
§ 21.
See ante, p. 669,
700, ch. 184, § 18.

§ 17. If any officer, for performing an official duty for which a fee or compensation is allowed or provided by law, knowingly demand and receive a greater fee or compensation than is so allowed or provided, he shall be fined not exceeding fifty dollars.

1 R. C. p. 318,
§ 18.
1847-8, p. 108,
§ 22.
Ante, p. 669, 700,
ch. 184, § 18.

§ 18. If any person, authorized by law to charge fees for services performed by him, and issue bills therefor, fraudulently issue a fee bill for a service not performed by him, or for more than he is entitled to, he shall be fined not exceeding five hundred dollars.

1 R. C. p. 273, ch.
77, § 2.
1847-8, p. 108,
§ 23.
Ante, p. 84, ch.
12, § 1.

§ 19. If a clerk of a court, or other public officer, fraudulently make a false entry, or erase, alter, secrete or destroy any record in his keeping and belonging to his office, he shall be confined in jail not more than one year, and fined not exceeding one thousand dollars.

Id. § 22, 23.

§ 20. Every person convicted under either of the two preceding sections, shall moreover forfeit his office, and be forever incapable of holding any post mentioned in the first section of chapter twelve.

1 R. C. p. 572, ch.
149.
1838, p. 70, ch.
91.

§ 21. If a free person steal, or fraudulently secrete or destroy a public record, or part thereof, he shall, if the offence be not embraced by the nineteenth section, be confined in jail not more than one year, and fined not exceeding one thousand dollars.

Summoning or procuring juror to act partially. Contempts of court.

1847-8, p. 108,
§ 25.

Ante, p. 84, ch.
12, § 1.

§ 22. A sheriff or other officer who, corruptly, or through favour or ill will, shall summon a juror, with intent that such juror shall find a verdict for or against either party, shall be fined not exceeding five hundred dollars, and forfeit his of-

fice, and be forever incapable of holding any post mentioned in the first section of chapter twelve.

§ 23. If any free person shall procure, or attempt to procure, a juror to be summoned, with intent that such juror shall find a verdict for or against either party, he shall be fined not exceeding five hundred dollars. 1847-8, p. 108, § 26.

§ 24. The courts and the judges, and justices thereof, may issue attachments for contempts, and punish them summarily, only in the cases following: 1830-31, p. 48, ch. 11, § 25. 1847-8, p. 159, ch. 24, § 1.

First, Misbehaviour in the presence of the court, or so near thereto as to obstruct or interrupt the administration of justice. 4 Leigh 685. 2 Va. Cas. 320, 408.

Secondly, Violence or threats of violence to a judge, justice or officer of the court, or to a juror, witness or party going to, attending, or returning from, the court, for or in respect to any act or proceeding had, or to be had, in such court.

Thirdly, Misbehaviour of an officer of the court, in his official character.

Fourthly, Disobedience or resistance of an officer of the court, juror, witness or other person, to any lawful process, judgment, decree or order of the said court.

§ 25. No court shall, without a jury, for any such contempt as is mentioned in the first class embraced in the preceding section, impose a fine exceeding fifty dollars, or imprison more than ten days. But in any such case the court may empanel a jury (without an indictment, information or any formal pleading) to ascertain the fine or imprisonment proper to be inflicted, and may give judgment according to the verdict. 1830-31, id. 1847-8, id. § 2.

§ 26. No court shall impose a fine for a contempt, unless the defendant be present in court, or shall have been served with a rule of the court, to shew cause on some certain day, and shall have failed to appear and shew cause. Id. 2 Va. Cas. 408

§ 27. If any person, by threats or force, attempt to intimidate or impede a judge, justice, juror, witness, or an officer of a court, in the discharge of his duty, or to obstruct or impede the administration of justice in any court, he shall be prosecuted as for a misdemeanor, and punished by fine and imprisonment, or either, at the discretion of a jury. 1830-31, p. 48, ch. 11, § 25. 1847-8, p. 159, ch. 24, § 4. 2 Va. Cas. 1.

CHAPTER CXCIV.

OF OFFENCES AGAINST THE PEACE.

SEC.

1. Riot, rout and unlawful assembly, suppressed.

White person arrested therefor, committed or bailed.

3. } Penalty on justice failing in duty;
4. } on a person disobeying his order
to disperse.

5. Justice and persons acting under

SEC.

their orders, guiltless, if a person be killed, &c. If either of them killed, all engaged in the assembly guilty.

6. Punishment of rioter, when dwelling-house injured, and when not.

7. Carrying about concealed weapons.

1 R. C. p. 556, ch.
142.
1847-8, p. 109, ch.
7, § 1 to 7.
2 Va. Cas. 268.

§ 1. All judges and justices may suppress riots, routs and unlawful assemblies within their jurisdiction. And it shall be the duty of each of them to go among, or as near as may be with safety to, persons riotously, tumultuously or unlawfully assembled, and in the name of the law command them to disperse; and if they shall not thereupon immediately and peaceably disperse, such judge or justice giving the command, and any other present, shall command the assistance of all persons present, and of the sheriff or sergeant of the county or corporation, with his *posse* if need be, in arresting and securing those so assembled. If any white person present, on being required to give his assistance or depart, fail to obey, he shall be deemed a rioter.

Id.

§ 2. If a white person be arrested for a riot, rout or unlawful assembly, the judge or justice ordering the arrest, or any other justice, shall commit him to jail, unless he shall enter into recognizance, with sufficient security, to appear before the circuit court having jurisdiction of the offence, at its then next term, to answer therefor, and in the meantime to be of good behaviour and keep the peace.

Id.

§ 3. If any judge or justice have notice of a riotous, tumultuous or unlawful assembly, in the county or corporation in which he resides, and fail to proceed immediately to the place of such assembly, or as near as he may safely, or fail to exercise his authority for suppressing it and arresting the offenders, he shall be fined not exceeding one hundred dollars.

Id.

§ 4. If any person, engaged in such assembly, being commanded as aforesaid to disperse, fail to do so without delay, any such judge or justice may require the aid of a sufficient number of persons, in arms or otherwise, and proceed, in such manner as he may deem expedient, to disperse and suppress such assembly, and arrest and secure those engaged in it.

Id.

§ 5. If by any means, taken under authority of this act, to disperse any such assembly, or arrest and secure those engaged in it, any person present, as spectator or otherwise, be killed or wounded, any judge or justice exercising such authority, and every one acting under his order, shall be held guiltless; and if the judge or justice, or any person acting under the order of either of them, be killed or wounded in taking such means, or by the rioters, all persons, engaged in such assembly, shall be deemed guilty of such killing or wounding.

Id.

§ 6. If any rioter, being free, pull down or destroy, in whole or in part, any dwelling-house, or assist therein, he shall be confined in the penitentiary not less than one nor more than five years; and though no such house be so injured, every rioter and every person unlawfully or tumultuously assembled, if free, shall be confined in jail not more than one year, and fined not exceeding one hundred dollars.

1838, p. 76, ch.
101.
1847-8, p. 110, § 8

§ 7. If a free person, habitually, carry about his person hid from common observation, any pistol, dirk, bowie knife, or weapon of the like kind, he shall be fined fifty dollars. The informer shall have one half of such fine.

CHAPTER CXCVI.

OF OFFENCES AGAINST MORALITY AND DECENCY.

SEC.		SEC.	
1. }	White person marrying, when former husband or wife is living.	10. }	Keeping house of ill-fame. Ob-
2. }	Proviso.	11. }	scene books, prints, &c.
3. }	Marriage within prohibited degrees, punished.	12. }	Crime against nature.
4. }	Issuing license or celebrating marriage contrary to law.	13. }	Violation of sepulture.
5. }		14. }	Cruelty to animals.
6. }	Adultery and lewdness.	15. }	Profane swearing and drunkenness.
7. }		16. }	Sabbath breaking.
8. }	White person marrying a negro or	17. }	Exception as to the mail and as to the Jews.
9. }	celebrating such marriage.	18. }	Wilful interruption of religious worship.

Unlawful marriages.

§ 1. Any white person, being married, who, during the life of the former husband or wife, shall marry another person in this state, or, if the marriage with such other person take place out of the state, shall thereafter cohabit with such other person in this state, shall be confined in the penitentiary not less than one nor more than five years. 1 R. C. p. 400, ch. 106, § 19. 1839, p. 46, ch. 74. 1847-8, p. 111, § 2. 2 Va. Cas. 95.

§ 2. The preceding section shall not extend to a person whose former husband or wife shall have been continually absent from such person for seven years next before the marriage of such person to another, and shall not have been known by such person to be living within that time; nor to a person who shall, at the time of the subsequent marriage, have been divorced from the bond of the former marriage, or whose former marriage shall at that time have been declared void, by the sentence of a court of competent jurisdiction. Id.

§ 3. If any white person marry in violation of the tenth or eleventh section of chapter one hundred and eight, he shall be confined in jail not more than six months, or fined not exceeding five hundred dollars, at the discretion of the jury. And if any persons, resident in this state, and within the degrees of relationship mentioned in those sections, shall go out of this state, for the purpose of being married, and with the intention of returning, and be married out of it, and afterwards return to and reside in it, cohabiting as man and wife, they shall be as guilty and be punished as if the marriage had been in this state. The fact of their cohabitation here as man and wife shall be evidence of their marriage. 1 R. C. p. 399, § 18. 1847-8, p. 111, § 8. Ante, p. 470, 471, ch. 108, § 10, 11. 2 Va. Cas. 331. 5 Rand. 657.

§ 4. If any clerk of a court, knowingly, issue a marriage license contrary to law, he shall be confined in jail not more than one year, and fined not exceeding five hundred dollars. 1847-8, p. 111, § 9. 10.

§ 5. If any person, knowingly, perform the ceremony of marriage between white persons without lawful license, or officiate in celebrating the rites of marriage without being 1 R. C. p. 401, § 23.

authorized by law to do so, he shall be confined in jail not more than one year, and fined not exceeding five hundred dollars.

Adultery, &c.

1 R. C. p. 555, § 6.
1847-8, p. 110, § 1.
2 Grat. 555.

§ 6. If a free person commit adultery or fornication, he shall be fined not less than twenty dollars.

1847-8, p. 111, § 3.

§ 7. If any white persons, not married to each other, lewdly and lasciviously associate and cohabit together, or whether married or not, be guilty of open and gross lewdness and lasciviousness, they shall be fined not less than fifty dollars.

1847-8, p. 111, § 4.

§ 8. Any white person who shall intermarry with a negro, shall be confined in jail not more than one year, and fined not exceeding one hundred dollars.

1 R. C. p. 401,
§ 33.
1847-8, p. 111, § 5.

§ 9. Any person who shall perform the ceremony of marriage between a white person and a negro, shall forfeit two hundred dollars, of which the informer shall have one-half.

Id. § 6.

§ 10. If a free person keep a house of ill-fame, resorted to for the purpose of prostitution or lewdness, he shall be confined in jail not more than one year and fined not exceeding two hundred dollars.

Id. § 7.

§ 11. If a free person import, print, publish, sell or distribute, any book, or other thing, containing obscene language, or any print, picture, figure, or description, manifestly tending to corrupt the morals of youth, or introduce into any family or place of education, or buy or have in his possession any such thing for the purpose of sale, exhibition or circulation, or with intent to introduce it into any family or place of education, he shall be confined in jail not more than one year and fined not exceeding two hundred dollars.

1 R. C. p. 586,
ch. 159.
1847-8, p. 112,
§ 11.
1 Va. Cas. 307.

§ 12. If any free person shall commit the crime of buggery, either with mankind, or with any brute animal, he shall be confined in the penitentiary not less than one nor more than five years.

Violation of sepulture; cruelty to animals; profanity, &c.

1847-8, p. 112,
§ 14.

§ 13. If a free person, unlawfully, disinter or displace a dead human body, or any part of a dead human body, which shall have been deposited in any vault or other burial place, he shall be confined in jail not more than one year, and fined not exceeding five hundred dollars.

Id. § 15.

§ 14. If a free person cruelly beat or torture any horse, or other beast, whether his own or that of another, he shall be fined not exceeding fifty dollars.

1 R. C. p. 554, § 1.
1830-31, p. 108,
ch. 40.
1847-8, p. 111,
§ 12.

§ 15. If a white person, arrived at the age of discretion, profanely curse or swear, or get drunk, he shall be fined, by a justice, one dollar for each offence.

1 R. C. p. 555, § 5.
1847-8, p. 112,
§ 16.

§ 16. If a free person, on a Sabbath day, be found labouring at any trade or calling, or employ his apprentices, servants

or slaves in labour or other business, except in household or other work of necessity or charity, he shall forfeit two dollars for each offence; every day any servant, apprentice or slave is so employed, constituting a distinct offence.

§ 17. No forfeiture shall be incurred, under the preceding section, for the transportation on Sunday of the mail, or of passengers and their baggage. And the said forfeiture shall not be incurred by any person who conscientiously believes, that the seventh day of the week ought to be observed as a Sabbath, and actually refrains from all secular business and labour on that day, provided he does not compel a slave, apprentice or servant, not of his belief, to do secular work or business on Sunday, and does not on that day disturb any other person.

§ 18. If a free person, wilfully, interrupt or disturb any assembly met for the worship of God, he shall be confined in jail not more than six months, and fined not exceeding one hundred dollars, and a justice may put him under restraint during religious worship, and bind him, for not more than one year, to be of good behaviour.

1 R. C. p. 555,
§ 3, 4.
1847-8, p. 112,
§ 13.
2 Va. Cas. 402.
3 Grat. 624.

CHAPTER CXCVII.

OF OFFENCES AGAINST PUBLIC HEALTH.

SEC.

1. Selling unsound provisions.

SEC.

2. Adulterating provisions or medicine.

§ 1. If a free person, knowingly, sell any diseased, corrupted or unwholesome provisions, whether meat or drink, without making the same known to the buyer, he shall be confined in jail not more than six months, and fined not exceeding one hundred dollars.

1 R. C. p. 551,
ch. 137.
1847-8, p. 112,
ch. 9, § 1.

§ 2. If a free person fraudulently adulterate, for the purpose of sale, any thing intended for food or drink, or any drug or medicine, with any substance injurious to health, he shall be confined in jail not more than one year, and fined not exceeding five hundred dollars; and the adulterated articles shall be forfeited and destroyed.

1847-8, p. 112,
§ 2, 3.

CHAPTER CXCVIII.

OF OFFENCES AGAINST PUBLIC POLICY.

Gaming ; lotteries and lottery tickets.

SEC.

1. } Keeping or permitting faro bank
2. } and other gaming tables, pu-
3. } nished.
3. Those aiding them as doorkeepers, &c. punished.
4. } Betting at such table, or losing
5. } twenty dollars at any game.
6. } Permitting gaming by a tavern
7. } keeper. His knowledge of it
8. } when presumed.
8. Tavern keeper, &c. hiring to another any outhouse, &c. for purpose of gaming.
9. Winning by cheating or other fraud.
10. Betting on election or appointment.
11. } Setting up a lottery, or having lot-
12. } tery tickets not authorized by
13. } law.
13. } Making, &c. or having in posses-
14. } sion fictitious lottery tickets.
15. Money &c. drawn or proposed to be drawn in such lottery, forfeited.

Unchartered banks and illegal circulation.

16. } Members of unchartered bank,
17. } and persons issuing, passing or
18. } receiving notes for circulation,
19. } contrary to law, punished.
19. Also, those bringing into state, for circulation, notes under five dollars.
20. } All previous sections, remedial.
21. } Attorneys' fees in such cases.

Seditious speeches, &c. as to slaves ; free negroes illegally in the state.

SEC.

22. } Denying right of property in slaves,
23. } and writings, &c. to excite insur-
24. } rection.
24. } Postmasters, knowing of such writ-
25. } ting in the mail, to give notice
26. } thereof; proceedings thereon.
26. } When free negro, remaining in
29. } the state, or brought into state,
29. } contrary to law. Proceedings
29. } against him, and persons bring-
29. } ing him in.

Assembling of negroes. Trading by free negroes.

30. } Unlawful assembly of slaves ; what
31. } is, and how punished.
32. White person, teaching negroes, or with them in unlawful assembly.
33. Free negroes, when and where not to sell agricultural products.

Other offences against policy.

34. Crediting students contrary to law, how punished.
35. Inspector of tobacco issuing false receipt.
36. } Making deed, in fraud of election
37. } law, and voting under it.
38. Giving or receiving reward for voting at elections.
39. } Importing convicts or slaves con-
40. } trary to law.

Gaming ; lotteries and lottery tickets.

1 R. C. p. 565,
§ 11 ; p. 566, § 17,
18.
1827-8, p. 28, ch.
36, § 4.
1847-8, p. 113, ch.
10, § 1.
6 Rand. 694.

Ante, p. 265, ch.
51, § 32.

§ 1. A free person, who shall keep or exhibit a gaming table, commonly called A B C, or E O table, or faro bank, or a table of the like kind, under any denomination, whether the game or table be played with cards, dice or otherwise, or who shall be a partner, or concerned in interest, in the keeping or exhibiting such table or bank, shall be confined in jail not less than two nor more than twelve months, and be fined not less than one hundred nor more than one thousand dollars. Any such table or faro bank, and all money staked, or exhibited to allure persons to bet, at such table, may be seized by order of a court or under the warrant of a justice, and the money so seized, after deducting therefrom one-half for the person making the seizure, shall be forfeited, as is provided in the thirty-second section of chapter fifty-one, in respect to the forfeiture declared by that chapter, and the table and faro bank burnt.

§ 2. If a free person knowingly permit a gaming table or faro bank, such as is mentioned in the preceding section, to be kept or exhibited on any premises in his occupation, he shall be confined in jail not more than one year, and fined not less than one hundred nor more than one thousand dollars.

§ 3. If a free person shall act as doorkeeper, guard or watch, or employ another person to act as such, for a keeper or exhibitor of a gaming table or faro bank, or shall resist, or by any means or device prevent, hinder, or delay the lawful arrest of such keeper or exhibitor, or the seizure of the table or bank, or money exhibited or staked thereat, or shall unlawfully take the same from the person seizing it, he shall be confined in jail not more than one year, and fined not exceeding one thousand dollars.

§ 4. If a free person bet or play at any such table or bank as is mentioned in the first section, or if at any ordinary, racefield or other public place, he play at any game except bowls, chess, backgammon, draughts, or a licensed game, or bet on the sides of those who play, he shall be fined thirty dollars, and shall, if required by the court, give security for his good behaviour for one year, or in default thereof may be imprisoned not more than three months.

§ 5. If a free person, by playing or betting at any game or wager, elsewhere than at a public place, lose or win, within twenty-four hours, a greater sum, or anything of greater value than twenty dollars, he shall be punished as in the preceding section.

§ 6. If a keeper of an ordinary or house of entertainment permit unlawful gaming at his house, or at any outhouse, booth, arbour, or other place appurtenant thereto or held therewith, he shall be fined one hundred dollars and shall forfeit his license, and give security for his good behaviour for one year, or, in default of such security, be imprisoned not more than four months.

§ 7. In a prosecution under the preceding section, if the gaming be proved, it shall be presumed it was permitted by the keeper of the house, unless it appear that he did not know of or suspect such gaming, or that he endeavoured to prevent it and gave information of it, with the names of the players, to the next court of the county or corporation.

§ 8. If a keeper of an ordinary or house of entertainment let or hire to another person any outhouse or other place, which has been at any time appurtenant to or held with the house kept by him, with intent that unlawful gaming be permitted thereat, he shall suffer the same punishment and incur the same forfeiture, as if such unlawful gaming were permitted at his own principal house; and in a prosecution therefor, if the gaming be proved, it shall be presumed that such outhouse or other place was let or hired with intent aforesaid, unless the presumption be repelled in the manner mentioned in the preceding section.

1 R. C. p. 564,
§ 9.
1847-8, p. 115,
§ 10.

§ 9. If a free person, playing at any game, or making a wager, or having share in any stake or wager, or betting on the hands or sides of others playing at any game, or making a wager, shall cheat, or by fraudulent means win or acquire, for himself or another, money or other valuable thing, he shall be confined in jail not more than one year, and fined not less than five times the value of the money or thing won or acquired.

1847-8, p. 115,
§ 11.

§ 10. If a free person bet or wager money or other thing, over the value of five dollars, on any election, or appointment to any office or place, to be made under authority of the constitution and laws of this state, or of the *United States*, he shall be fined not exceeding the value of such money or other thing.

1 R. C. p. 570,
§ 27.
1824-5, p. 21, ch.
22.
1833-4, p. 81, ch.
69.
1847-8, p. 115,
§ 12.

§ 11. If a free person, without authority of law, set up or promote a lottery or raffle, for money or other thing of value, or be concerned in managing or drawing such lottery or raffle, or in any house under his control, knowingly, permit such lottery or raffle, or the sale of any lottery ticket or share thereof, or any other writing, certificate, bill, token or other device, purporting or intended to entitle any person to any prize or share of, or interest in, a prize to be drawn in such lottery, or in any foreign lottery, or shall, knowingly, permit money or other property to be raffled for in such house, or to be won therein, by throwing or using dice, or by any other game of chance, he shall be fined not exceeding one thousand dollars.

1824-5, p. 24, ch.
22, § 1.
1833-4, p. 81, ch.
69.
1847-8, p. 115,
§ 13.

§ 12. If a free person, for himself or another person, without lawful authority, sell, or have in his possession for the purpose of sale, or with intent to exchange or negotiate, or aid in selling, exchanging or negotiating, a ticket or share of a ticket in a lottery, or any such writing, certificate, bill, token or device, as is mentioned in the preceding section, he shall be fined not exceeding one hundred dollars.

1847-8, p. 114,
§ 14.

§ 13. If a free person make, sell, exchange or negotiate, or have in his possession with intent to sell, exchange or negotiate, or assist in making or selling, or in attempting to sell, exchange or negotiate, any false or fictitious lottery ticket, or share thereof, or any writing, certificate, bill, token or device, before mentioned, or any ticket, or share thereof, in any false or fictitious lottery, or if he receive any money or other thing of value for such ticket or share, writing, certificate, bill, token or device, purporting that any person shall be entitled to receive any prize, or share thereof, or other thing of value that may be drawn in such lottery, he knowing the same to be false or fictitious, he shall be confined in jail not more than one year, and fined not exceeding five hundred dollars.

Id. § 15.

§ 14. In a prosecution under the preceding section, any ticket, or share of a ticket, or any other writing or thing, which the accused sold or offered for sale, shall be presumed to be false or fictitious, unless it be proved that the same is true and genuine, and that such lottery was existing and undrawn, and that such ticket, or share thereof, or other writing or thing be-

fore mentioned, was issued by lawful authority, and binding upon the persons who issued the same.

§ 15. All money and things of value, drawn or proposed to be drawn by an inhabitant of this state, and all money or things of value received by such person, by reason of his being the owner or holder of a ticket or share of a ticket in any lottery, or pretended lottery, contrary to this act, shall be forfeited to the commonwealth.

1 R. C. p. 570,
§ 27.
1847-8, p. 116,
§ 16.

Unchartered banks and illegal circulation.

§ 16. All members of any association or company that shall trade or deal as a bank, or carry on banking, without authority of law, and their officers and agents therein, shall be confined in jail not more than six months, and fined not less than one hundred nor more than five hundred dollars.

1847-8, p. 116,
§ 17.

§ 17. Every free person who, with intent to create a circulating medium, shall issue, without authority of law, any note or other security, purporting that money or other thing of value is payable by, or on behalf of, such person, and every officer and agent of such person therein, shall be confined in jail not more than six months, and fined not less than one hundred nor more than five hundred dollars.

1819-20, p. 9, ch.
8, § 1, 2.
1838, p. 80, ch.
107, § 1, 4.
1847-8, p. 116,
§ 19.

§ 18. If a free person pass or receive in payment any note or security, issued in violation of either of the two preceding sections, he shall be fined not less than twenty, nor more than one hundred dollars.

1819-20, p. 9, ch.
8, § 1, 2.
1820-21, p. 36, ch.
36.
1838, p. 81, § 4.
1847-8, p. 117,
§ 18, 20.

§ 19. If a free person shall bring into this state, with intent to put the same in circulation, any bank note of less denomination than five dollars, issued in another state, or shall pass or receive such note in payment, he shall be fined not less than twenty, nor more than one hundred dollars; but this section shall not apply to a non-resident of this state, travelling or temporarily sojourning therein.

1819-20, p. 10, § 3.
1847-8, p. 118,
§ 21.

Previous sections remedial; attorney's fee under them.

§ 20. All laws for suppressing gaming, lotteries, unchartered banks, and the circulation of bank notes for less than five dollars, shall be construed as remedial.

1 R. C. p. 379,
§ 29.
1847-8, p. 116,
§ 22.

§ 21. In every case of conviction, for an offence under any preceding section of this chapter, an attorney's fee of ten dollars shall be taxed in the costs.

1 R. C. p. 570,
§ 26.
1838, p. 82, ch.
107.
1841-2, p. 44, § 4.
1842-3, p. 57, § 1.
1847-8, p. 117,
§ 23.

Seditious speeches, &c. as to slaves; free negroes illegally in the state.

§ 22. If a free person, by speaking or writing, maintain that owners have not right of property in their slaves, he shall be confined in jail not more than one year, and fined not

1835-6, p. 44, ch.
66, § 1, 4.
1847-8, p. 117,
§ 24.

exceeding five hundred dollars. He may be arrested, and carried before a justice, by any white person.

1831-2, p. 31, ch. 22, § 7.
1833-4, p. 80, ch. 68, § 7.
1835-6, p. 44, § 2.
1847-8, p. 117, § 26.

§ 23. If a free person write, print, or cause to be written or printed, any book or other writing, with intent to advise or incite negroes in this state to rebel or make insurrection, or inculcating resistance to the right of property of masters in their slaves, or if he shall, with intent to aid the purpose of any such book or writing, knowingly, circulate the same, he shall be confined in the penitentiary not less than one nor more than five years.

1835-6, p. 44, § 3.
1847-8, p. 117, § 26.

§ 24. If a postmaster, or deputy postmaster, know that any such book or other writing has been received at his office in the mail, he shall give notice thereof to some justice, who shall enquire into the circumstances and have such book or writing burned in his presence; if it appear to him that the person to whom it was directed subscribed therefor, knowing its character, or agreed to receive it for circulation to aid the purposes of abolitionists, the justice shall commit such person to jail. If any postmaster, or deputy postmaster, violate this section, he shall be fined not exceeding two hundred dollars.

Id. § 27.

§ 25. Any judge or justice, before whom any person may be brought for the offence mentioned in the preceding section, shall cause him to enter into a recognizance, with sufficient surety, to appear before the circuit court having jurisdiction of the offence, at the next term thereof, and, in default of such recognizance, shall commit him to jail.

1847-8, p. 118, 19, § 34.
Ante, p. 466, ch. 107.

§ 26. Any negro remaining in this state in violation of chapter one hundred and seven, shall forfeit his freedom, and may be prosecuted as in a case of misdemeanor, in any county or corporation in which he may be found. In such prosecution, it shall be sufficient to charge in general terms, that the defendant was emancipated since the first day of May eighteen hundred and six, or claims his right to freedom under a negro emancipated since that day, and that such defendant is remaining in the state without lawful permission. Upon the trial, the defendant shall appear in person or by attorney, and an attested copy of his register shall be *prima facie* evidence of the facts therein stated. Unless it appear upon the trial that the defendant has such permission, he shall be deemed guilty, and judgment shall be given that he forfeit his freedom and be sold as a slave. The sale shall be made as in the case of slaves levied upon, and the clerk shall make return to the auditor, and the officer account for and pay the proceeds of sale as in the case of a pecuniary forfeiture.

Ante, p. 229-30, ch. 43, § 15 to 22; p. 253, ch. 49, § 37, 38, 39.

1833-4, p. 78, § 2, 3.
1847-8, p. 119, § 35.

§ 27. Any free person who shall bring a free negro into this state, shall be confined in jail not more than six months and fined not exceeding five hundred dollars. This section shall not apply to a person travelling into, or through, the state with a free negro as a servant, nor to a master or skipper of a vessel or steamboat, with a free negro on board, who shall depart therewith; but any such free negro who shall be

found away from such vessel or boat, or from the lodgings of his employer, except on the business, or with the written permission, of such master or employer, shall be punished with stripes.

§ 28. No free negro shall migrate into this state. If a free negro, not authorized by law to do so, come into or remain in this state, any person may, and every sheriff, sergeant and constable is required to, apprehend and carry him before some justice of the county or corporation where he may be, who shall require him to pay one dollar to the person apprehending him, and give bond in a penalty not less than one hundred dollars, with condition that he will leave the state in ten days and not return therein; such bond shall be returned by the justice to the court of his county or corporation. If the free negro fail to pay the fee aforesaid, or to give such bond, he may, by order of the justice, be punished with stripes, which may, by subsequent order of a justice, be repeated, from time to time, so long as the negro remains in the state; but this section shall not apply to a free negro driven by shipwreck, or other unavoidable necessity, into this state, who shall depart therefrom as soon as he can, nor one employed on a vessel or steamboat, or as a servant, as mentioned in the preceding section, if he do not remain in the state longer than thirty days.

§ 29. If a free negro migrate from this state, or be sent out of it for the purpose of education, or go for any purpose to a non-slaveholding state, and return into this state, he may be proceeded against as in the preceding section. But if he be an infant, instead of being so expelled before his arrival to twenty-one years of age, the overseers of the poor may bind him out as an apprentice until that time.

Assembling of negroes. Trading by free negroes.

§ 30. If any person, knowingly, permit a slave, not belonging to him, to remain on his plantation, lot or tenement above four hours at one time, without leave of the owner or manager of such slave, he shall be fined three dollars; and any person who shall so permit more than five such slaves to be at one time on his plantation, lot or tenement, shall be fined one dollar for each slave above that number, and such assemblage shall be an unlawful assembly.

§ 31. Every assemblage of negroes for the purpose of religious worship, when such worship is conducted by a negro, and every assemblage of negroes for the purpose of instruction in reading or writing, or in the night time for any purpose, shall be an unlawful assembly. Any justice may issue his warrant to any officer or other person, requiring him to enter any place where such assemblage may be, and seize any negro therein; and he, or any other justice, may order such negro to be punished with stripes.

1830-31, p. 108,
§ 5, 6.
1847-8, p. 120,
§ 40.

§ 32. If a white person assemble with negroes for the purpose of instructing them to read or write, or if he associate with them in an unlawful assembly, he shall be confined in jail not exceeding six months and fined not exceeding one hundred dollars; and any justice may require him to enter into a recognizance, with sufficient security, to appear before the circuit, county or corporation court, of the county or corporation where the offence was committed, at its next term, to answer therefor, and in the mean time to keep the peace and be of good behaviour.

1842-3, p. 59,
ch. 86, § 1, 2.
1843-4, p. 58,
ch. 75

§ 33. If a free negro sell or barter, or offer to sell or barter, any agricultural products, without having a certificate in writing, from one respectable white person of the county or neighbourhood, of his belief, that he raised, or otherwise came honestly by the same, such products shall be forfeited and the negro be punished with stripes. And any white person who shall purchase, or receive in trade, agricultural products, of a free negro, who has not such certificate, shall be deemed guilty of a misdemeanor. Such products shall, by order of the justice or court before whom the offender is convicted, be sold by a constable or the officer of the court, like goods levied on, and the proceeds, after deducting a commission of ten per cent. for the officer, shall be paid to the overseers of the poor for the county or corporation. This section shall not be in force in any county other than *Accomack* or *Richmond*, or in any corporation, until the county or corporation court, (the acting justices thereof being summoned and a majority of them being present,) shall so order.

Ante, p. 253, ch.
49, § 37, 38, 39.

Crediting Students. Frauds by tobacco inspectors, and on election laws.

1838, p. 30,
§ 2, 3.
1847-8, p. 130,
§ 41.
Ante, p. 579, 580,
ch. 143, § 1.

§ 34. If a free person so violate the first section of chapter one hundred and forty-three, as to be liable to the forfeiture thereby declared, he shall, moreover, be fined not less than fifty, nor more than three hundred dollars, and, upon conviction, he shall be bound by the court in a sum not less than five hundred dollars, with at least two sufficient sureties, to be of good behaviour for a year, and any subsequent violation of the section aforesaid shall be held to be a forfeiture of the recognizance.

2 R. C. p. 157,
§ 44.
1847-8, p. 121,
§ 42.

§ 35. If an inspector of tobacco issue, or cause to be issued, his receipt or note for any tobacco not received into the warehouse of which he is inspector, or more than one receipt or note for the same tobacco, except when authorized by law to do so, or re-issue or pass away a tobacco receipt or note, after the delivery of the tobacco for which it was given, he shall be confined in the penitentiary not less than one nor more than five years.

1841-2, p. 26,
ch. 42, § 2.

§ 36. If a deed, purporting to convey real estate or chattels real, be executed not *bona fide*, but for the purpose of enabling

the grantee to exercise the right of suffrage, and with the understanding of the parties to such deed, that it is not to vest in the grantee any beneficial interest in the property conveyed, every such party to such deed shall be fined not less than fifty dollars, and, in the discretion of the court, be confined in jail not exceeding three months.

§ 37. If any party to any deed, made in the manner and with the understanding mentioned in the preceding section, shall vote, or offer to vote, in any election by virtue of any title to or interest in real estate derived from such deed, he shall be fined not less than ten nor more than one hundred dollars, and, in the discretion of the court, may be confined in jail not more than three months. 1841-2, p. 26, ch. 42, § 1.

§ 38. If any free person, directly or indirectly, give to a voter, in any election, any money, goods or chattels, under an agreement, express or implied, that such voter shall give his vote for a particular candidate, such person shall be punished by fine not less than twenty nor more than one hundred dollars. And the voter receiving such money, goods or chattels in pursuance of such agreement, shall be punished in like manner with the person giving the same.

Importing convicts and slaves.

§ 39. If a master of a vessel or other person, knowingly, import or bring into this state, from any place out of the *United States*, any person convicted of crime, or any slave sold and transported beyond the limits of this state for crime, he shall be confined in jail for three months, and be fined one hundred dollars. 1 Hen. Stat. p. 509.
12 Hen. Stat. p. 668, ch. 12.
1 R. C. p. 68, ch. 24, § 1, 2.

§ 40. Any free person who shall bring into this state any slave other than is permitted by the second section of the one hundred and third chapter, or shall buy, sell or hold therein any such slave, knowing him to have been brought into the state contrary to this section, shall forfeit a sum equal to the value of the slave, and the slave shall be free, but shall not reside in the state, and may be compelled to leave it in the manner provided by the twenty-eighth section of this chapter. This section shall not apply to any slave brought into this state not to reside, but for a temporary visit or sojourn, and neither sold nor offered for sale therein. 1 R. C. p. 422, § 5.
Ante p. 457, ch. 103, § 2.

CHAPTER CXCIX.

GENERAL PROVISIONS CONCERNING CRIMES AND PUNISHMENTS.

SEC.

1. Felony and misdemeanor defined.
2. No punishment of death, except by statute.

SEC.

3. Common law offences punished as prescribed by statute.
4. Benefit of clergy; petit treason; suicide and attainder.

SEC.		SEC.	
6.	Felony not to merge civil remedy.	15.	Effect of former acquittal.
7.	As to principal in second degree, and accessaries.	16.	
8.		17.	How accused may be convicted.
9.		to	On what evidence in certain cases.
10.	Attempts to commit offences.	22.	
11.	Limitation of prosecutions.	23.	How term of imprisonment or amount of fine, fixed.
12.	Where offences prosecuted in cer- tain cases.	24.	
13.		25.	Punishment in cases of second to conviction.
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1847-8, p. 121, ch.
11, § 1.
2 Va. Cas. 122.

§ 1. Offences are either felonies or misdemeanors. Such offences as are punishable when committed by free persons, with death or confinement in the penitentiary, are felonies; all other offences are misdemeanors, except that an offence which, when committed by a slave, is punishable with death, is as to such slave a felony.

1847-8, p. 124,
§ 34.

§ 2. No crime shall be punished with death, unless it be directed by statute.

Id. § 30.

§ 3. A common law offence for which punishment is prescribed by statute, shall be punished only in the mode so prescribed.

1 R. C. p. 617,
§ 3; p. 618, § 10,
11; p. 632, ch.
172.
1847-8, p. 124,
§ 22.

§ 4. There shall be no plea of benefit of clergy, nor any distinction between murder and petit treason; but the last mentioned offence shall be punished as murder.

1 R. C. p. 613,
§ 35 to 58.
1847-8, p. 124,
§ 23, 25.

§ 5. No suicide nor attainder of felony shall work a corruption of blood or forfeiture of estate.

Id. § 29.
1 R. C. p. 581, ch.
155.
4 Munf. 444.

§ 6. The commission of a felony shall not stay or merge any civil remedy.

1847-8, p. 121, § 2.
11 Geo. iv. and
1 Will. iv. ch. 66,
§ 25.
2 Will. iv. ch. 34,
§ 18.
1 Vict. ch. 85, § 7.
Id. ch. 86, § 7.
Id. ch. 87, § 9.
Id. ch. 89, § 11.
2 Va. Cas. 211.

§ 7. In the case of every felony, every principal in the second degree and every accessory before the fact, shall be punishable as if he were the principal in the first degree, and every accessory after the fact shall be confined in jail not more than one year, and fined not exceeding five hundred dollars.

1847-8, p. 122,
§ 5.

§ 8. But no person in the relation of husband and wife, parent or grandparent, child or grandchild, brother or sister, by consanguinity or affinity, or servant to the offender, who, after the commission of a felony, shall aid or assist a principal felon or accessory before the fact, to avoid or escape from prosecution or punishment, shall be deemed an accessory after the fact.

1 R. C. p. 589,
§ 8; p. 609, § 37.
1847-8, p. 121, 2,
§ 3, 4, 5.

§ 9. An accessory, either before or after the fact, may, whether the principal felon be convicted or not, or be amenable to justice or not, be indicted, convicted and punished in the county or corporation in which he became accessory or in which the principal felon might be indicted. Any such accessory before the fact, may be indicted, either with such principal or separately.

1847-8, p. 122,
§ 12.

§ 10. Every free person who attempts to commit an offence, and in such attempt does any act towards its commission, but

fails to commit, or is prevented from committing it, shall, where not otherwise provided, be punished as follows:

If the offence attempted be punishable with death, the person making such attempt shall be confined in the penitentiary not less than one nor more than two years:

If it be punishable by confinement in the penitentiary, he shall be confined in jail not less than six nor more than twelve months:

If it be punishable by confinement in jail, or fine, he shall be confined in jail not more than six months, or fined not exceeding one hundred dollars.

§ 11. A prosecution for committing, or procuring another person to commit perjury, shall be commenced within three years next after the perjury was committed. And a prosecution for a misdemeanor or any pecuniary fine, forfeiture, penalty or amercement, shall be commenced within one year next after there was cause therefor, except that a prosecution for petit larceny may be commenced within five years after the commission of the offence; and except also, that this section shall not extend to a prosecution against a master or skipper of a vessel, for carrying a slave out of the state.

1 R. C. p. 614,
§ 60, 61.
1831-2, p. 26, ch.
27.
1838, p. 31, ch.
19, § 5.
1847-8, p. 144,
§ 14.
See ante, p. 593,
ch. 149, § 11.
1 Call 475.
1 Va. Cas. 312.
2 Va. Cas. 51.
9 Leigh 671.

§ 12. Prosecutions for offences committed, wholly or in part, without, and made punishable within this state, may be in any county or corporation in which the offender may be found, or to which he may be sent by any judge, justice or court.

1847-8, p. 122,
§ 6.
See ante, p. 723,
ch. 191, § 6.
2 Va. Cas. 205.

§ 13. An offence committed on the boundary of two counties, or within one hundred yards thereof, may be alleged to have been committed, and may be prosecuted and punished, in either county.

1847-8, p. 122,
§ 7.

§ 14. If a mortal wound or other violence or injury be inflicted, or poison be administered, in one county or corporation, and death ensue therefrom in another county or corporation, the offence may be prosecuted in either.

1 R. C. p. 609,
§ 36.
1847-8, p. 122,
§ 8.

§ 15. A person acquitted by the jury, upon the facts and merits on a former trial, may plead such acquittal in bar of a second prosecution for the same offence, notwithstanding any defect in the form or substance of the indictment or accusation on which he was acquitted.

1847-8, p. 122,
§ 10, 11.
1 Va. Cas. 164,
232.
2 Va. Cas. 89, 111,
273, 325, 345.
5 Rand. 665.

§ 16. A person acquitted of an offence, on the ground of a variance between the allegations and the proof of the indictment or other accusation, or upon an exception to the form or substance thereof, may be arraigned again on a new indictment or other proper accusation, and tried and convicted for the same offence, notwithstanding such former acquittal.

Id.

§ 17. No person shall be convicted of felony, unless by outlawry, or by his confession of guilt in court, or by his plea or demurrer, or by the verdict of a jury, accepted and recorded by the court.

1847-8, p. 122,
§ 9.

§ 18. Approvers shall not be admitted in any case.

Id. § 24.

§ 19. Except where it is otherwise expressly provided, a person convicted of felony shall not be a witness, unless he

Id. § 31.
Id. § 31.

has been pardoned or punished therefor, and a person convicted of perjury shall not be a witness, although pardoned or punished.

1 R. C. p. 570,
§ 28.
1847-8, p. 124,
§ 32.

§ 20. No person prosecuted for unlawful gaming, shall be competent to testify against a witness for the commonwealth in such prosecution, touching any unlawful gaming, committed by him prior to the commencement of such prosecution.

1 R. C. p. 581,
§ 9; p. 582, ch.
156, § 2.
1847-8, p. 124,
§ 33.

§ 21. No person who is not jointly tried with the defendant, shall be incompetent to testify in any prosecution, by reason of interest in the subject matter thereof.

1847-8, p. 153,
§ 48.

§ 22. In a criminal prosecution other than for perjury, or an action on a penal statute, evidence shall not be given against the accused of any statement made by him as a witness upon a legal examination.

1 R. C. p. 619,
§ 12.
1847-8, p. 123,
§ 18.

§ 23. The term of confinement in the penitentiary or in jail, of a white person convicted of felony, where that punishment is prescribed, and of a free negro convicted of felony in a circuit court, when that punishment is to be inflicted, shall be ascertained by the jury; and if a free negro be convicted of felony in a county or corporation court, shall be ascertained by such court, so far as it is not fixed by law.

1847-8, p. 123,
§ 19.
1 Call 555.
1 Va. Cas. 19, 262.

§ 24. The term of confinement in jail, of a person found guilty of a misdemeanor, where that punishment is prescribed, shall be ascertained by the court, and the amount of the fine, where the punishment is by fine, shall, except where it is otherwise provided, be assessed by the jury, so far as the term of confinement, and the amount of the fine, are not fixed by law.

1847-8, p. 123,
§ 13.
6 and 7 Will. iv.
ch. 111.

§ 25. When any person is convicted of an offence, and sentenced to confinement therefor in the penitentiary, and it is alleged in the indictment on which he is convicted, and admitted, or by the jury found, that he had been before sentenced in the *United States* to a like punishment, he shall be sentenced to be confined five years, in addition to the time to which he is or would be otherwise sentenced.

1847-8, p. 123,
§ 14.

§ 26. When any such convict shall have been, twice before, sentenced in the *United States* to confinement in a penitentiary, he shall be sentenced to be confined in the penitentiary for life.

Id. § 15.

§ 27. When a free person is convicted of petit larceny, and it is alleged in the indictment on which he is convicted, and admitted, or by the jury found, that he has been before sentenced in the *United States*, for the like offence, he shall be sentenced to be confined in the penitentiary for one year.

Id. § 16.
1 Va. Cas 151.

§ 28. When any person is convicted of two or more offences, before sentence is pronounced for either, the confinement to which he may be sentenced upon the second, or any subsequent conviction, shall commence at the termination of the previous term or terms of confinement.

Ante, p. 209, ch.
38, § 18, 19.

§ 29. When a free person is convicted of any offence mentioned in the eighteenth and nineteenth section of chapter thirty-eight, and it is alleged in the presentment, indictment or

information on which he is convicted, and admitted, or by the jury found, that he has been before convicted of the like offence, he shall be fined thirty dollars, and may, at the discretion of the court, be confined in jail not exceeding six months.

CHAPTER CC.

OFFENCES BY NEGROES.

SEC.

1. Free negro committing rape or abduction, or attempting rape of white female.
2. Free negro plotting murder, or stabbing, shooting, &c. white person with intent to kill.
3. Free negro delivering slave copy of his register.

SEC.

4. } Slave plotting insurrection or committing offence punishable as to free negro with death or confinement in penitentiary.
5. }
6. }
7. Slave committing offence, punishable as to free person as a misdemeanor.
8. Slave punished with stripes in other cases.
9. Where statute prescribes stripes, what number to be inflicted,

§ 1. If a free negro commit any offence, mentioned in the fifteenth or sixteenth section of chapter one hundred and ninety-one, or attempt by force or fraud to have carnal knowledge of a white female, he shall be punished, at the discretion of the jury, either with death, or by confinement in the penitentiary not less than five nor more than twenty years.

§ 2. If a free negro plot or conspire the murder of a white person, or maliciously shoot, stab, cut, wound, or by any means cause bodily injury to a white person, with intent to kill, he shall be punished at the discretion of the jury, either with death, or by confinement in the penitentiary not less than three nor more than ten years.

§ 3. If a free negro, on any pretext, deliver to a slave a copy of the register of his freedom, he shall be confined in the penitentiary not less than one nor more than five years.

§ 4. If a slave plot or conspire to rebel or make insurrection, or commit an offence for the commission of which a free negro, at the time of committing the same, is punishable with death or by confinement in the penitentiary for not less than three years, he shall be punished with death. But unless it be an offence for which a free white person, if he had committed it, might have been punished with death, such slave, instead of being punished with death, may, at the discretion of the court, be punished by sale and transportation beyond the limits of the *United States*.

§ 5. If a slave commit an offence for which a free negro, if he had committed it, might be punished by confinement in the penitentiary for a period less than three years, such slave shall be punished by stripes; and if, having been once sentenced

for such offence, he afterwards commit an offence for which a free negro, if he had committed it, might be punished by such confinement, he shall be punished with death, or, at the discretion of the court, by sale and transportation as aforesaid.

§ 6. If a slave be sentenced to sale and transportation, under either of the next two preceding sections, the same proceedings shall be had as in the case of a slave under sentence of death, whose punishment is commuted by the governor to sale and transportation.

1847-8, p. 126,
§ 14.

§ 7. If a slave commit an offence, the commission whereof by a free person, is punishable as a misdemeanor, he shall be punished by stripes.*

Id. § 6.

§ 8. A negro shall be punished with stripes:

First, If he use provoking language or menacing gestures to a white person:

Id. § 8.

Secondly, If he furnish a slave, without the consent of his master or manager, any pass, permit or token of his being from home with authority:

Id. § 4, 10.
1 R. C. p. 423,
§ 7, 8.
1831-2, p. 21, ch.
22, § 4.

Thirdly, If he keep or carry fire-arms, sword or other weapon, or balls or ammunition; besides forfeiting to the state, any such articles in his possession:

Id. § 8.
1847-8, p. 125,
§ 11.

Fourthly, If he be guilty of being in a riot, rout, unlawful assembly, or making seditious speeches:

Id. § 12.
1831-2, p. 20, ch.
22.

Fifthly, If he sell or attempt to sell, or prepare or administer, any medicine; except a slave administering medicine by his master's order, in his family, or the family of another, with the consent of such other, and except a free negro administering medicine in his own family, or the family of another person with the consent of such other.

§ 9. Whenever, by statute, punishment with stripes is prescribed, the number of stripes shall be in the discretion of the court or justice by whom the offence is tried, so as not to exceed thirty-nine at one time.

* The revisors (p. 991 of their reports,) reported as a section of this chapter, the following:

"If a negro, without the orders or direction of his master, manager or employer, be guilty of a violation of a statute which is made punishable only by a fine or forfeiture, he shall be punished with stripes, unless within such time as may be fixed by the court or justice, before whom he is convicted, he or some one for him pay a sum (fixed in like manner) not exceeding what might be imposed on a white person for the same violation." In the committee of revision this was struck out, and the 7th section inserted.

Title 55.

PROCEEDINGS IN CRIMINAL CASES.

- CHAP. 201. For preventing the commission of crimes.
 202. Of coroners' inquests.
 203. Of search warrants.
 204. Of arrest, commitment and bail.
 205. Of examining courts.
 206. Of grand juries.
 207. Of presentments, indictments and informations; and process thereon.
 208. Of trial and its incidents.
 209. Of exceptions, writs of error and execution of judgment.
 210. Of taxation and allowance of costs.
 211. General provisions as to proceedings.
 212. Of proceedings against negroes.

CHAPTER CCI.

FOR PREVENTING THE COMMISSION OF CRIMES.

SEC.

1. Conservators of the peace; power to bind to good behaviour.
2. } Duty of, on complaint that a crime
3. } is intended.
4. Proceeding when accused appears.
5. Right of accused to appeal.
6. } Power of court thereupon, and
7. } when accused is committed.

SEC.

8. Person going armed, when required to recognize.
9. Affray or threats in presence of conservator.
10. Proceedings when person suspected of retailing spirits without license.

Conservators of the peace; their powers and duties.

§ 1. Every judge throughout the state, and every justice and commissioner in chancery, within his county or corporation, shall be a conservator of the peace, and may require from persons not of good fame, security for their good behaviour, for a term not exceeding one year. 1 R. C. p. 263, ch. 74.
1847-8, p. 127, ch. 14, § 1, 17.

§ 2. If complaint be made to any such conservator that there is good cause to fear that a person intends to commit an offence against the person or property of another, he shall examine on oath the complainant and any witnesses who may be produced, reduce the complaint to writing, and cause it to be signed by the complainant. 1847-8, p. 127, § 2.

§ 3. If it appear proper, such conservator shall issue a warrant reciting the complaint, and requiring the person complained of forthwith to be apprehended and brought before him or some other conservator. Id. § 3.
3 Munf. 458.

§ 4. When such person appears, if the conservator, on hearing the parties, consider that there is not good cause for the complaint, he shall discharge the said person, and may give judgment in his favour against the complainant for his 1845-6, p. 64, ch. 87.
1847-8, p. 128, § 4,
5, 6, 7, 8.

costs. If he consider that there is good cause therefor, he may require a recognizance of the person against whom it is, and give judgment against him for the costs of the prosecution, or any part thereof; and unless such recognizance be given, he shall commit him to jail by a warrant, stating the sum and time in and for which the recognizance is directed. The person giving judgment, under this section, for costs, may issue a writ of *fieri facias* thereon, if an appeal be not allowed; and proceedings thereupon may be according to the ninth and eleventh sections of chapter one hundred and fifty.

Ante. p. 597, ch.
150, § 9, 11.

§ 5. A person from whom such recognizance is required, may, on giving it, appeal to the court of the county or corporation; in such case the officer, from whose judgment the appeal is taken, shall recognize such of the witnesses as he thinks proper.

1847-8, p. 128,
§ 9, 10.

§ 6. The court may dismiss the complaint or affirm the judgment, and make what order it sees fit as to the costs. If it award costs against the appellant, the recognizance which he may have given shall stand as a security therefor. When there is a failure to prosecute the appeal, such recognizance shall remain in force, although there be no order of affirmance. On any appeal the court may require of the appellant a new recognizance, if it see fit.

Id. § 11, 12.

§ 7. Any person committed to jail under this chapter may be discharged by the county or corporation court, on such terms as it may deem reasonable.

Id. § 13, 14.

§ 8. If a white person go armed with a deadly or dangerous weapon, without reasonable cause to fear violence to his person, family or property, he may be required to give a recognizance, with the right of appeal, as before provided, and like proceedings shall be had on such appeal.

Id. § 16.
1 R. C. p. 554, ch.
140.

§ 9. If a person, in the presence of a court or a conservator of the peace, make an affray, or threaten to kill or beat another, or to commit violence against his person or property, or contend with angry words, to the disturbance of the peace, he may, without process or further proof, if he be a white person, be required to give a recognizance, and if he be a negro, be punished with stripes.

1 R. C. p. 554,
ch. 140.
1847-8, p. 129,
§ 15.

Persons suspected of retailing liquors without license.

§ 10. If any justice suspect any free person of selling, by retail, wine or ardent spirits, or a mixture thereof, contrary to law, he shall summon the person, and such witnesses as he may think proper, to appear before him; and upon the persons appearing, or failing to appear, if the justice on examining the witnesses on oath, find sufficient cause, he shall direct the commonwealth's attorney for the court of his county or corporation, to institute a prosecution against such person, and shall recognize the material witnesses, or cause them to be summoned, to appear at the next term of the said court at

CHAPTER CCII.

OF CORONERS' INQUESTS.

SEC. 1. } What coroner to act. His warrant ; 2. } summons to witnesses. 3. } How warrant and summons execu- 4. } ted. Jury formed, and their oath. 5. How witnesses compelled to at- 6. tend ; how evidence taken. 6. Inquisition. 7. } Inquisition, evidence, &c., re- 8. } turned ; witnesses recognized. 8. } Coroner to issue same process 8. } as a justice.	SEC. 9. When deceased a stranger, bod to be buried ; how costs paid. 10. Coroner may require physicians to attend inquest ; their compen- sation. 11. Penalty on coroner for failure of duty. 12. Inquest may be taken on Sunday.
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§ 3. Any such officer to whom the warrant or summons Id. § 3. may be delivered, shall forthwith execute it, and make return thereof to the coroner at the time and place named therein; if he fail so to execute and return the same, he shall forfeit twenty dollars; and if any person, summoned as a juror, fail

to attend as required, without sufficient excuse, he shall forfeit ten dollars.

1 R. C. p. 288,
§ 8, 10; p. 290,
§ 18, 21.
1847-8, p. 135, § 4.

§ 4. If twelve jurors do not attend, the coroner may require the officer or any other person, to summon others. When the full number of twelve have appeared, the coroner, in view of the body, shall administer to them the following oath: "*You swear that you will diligently enquire, and true presentment make when, how and by what means, the person whose body here lies dead came to his death, and return a true inquest thereof upon your own knowledge and the evidence before you. So help you God.*"

1 R. C. p. 290,
§ 17.
1847-8, p. 135,
§ 5, 6, 7.

§ 5. Witnesses on whom the summons before mentioned is served, may be compelled by the coroner to attend and give evidence, and shall be liable in like manner as if the summons had been issued by a justice in a criminal case; they shall be sworn by the coroner before giving evidence to the inquest, and their evidence shall be reduced to writing by him or under his direction, and subscribed by them respectively.

1 R. C. id. § 21.
1847-8, id. § 8.
6 and 7 Vict. ch.
83, § 2.
9 and 10 Vict. ch.
62.

§ 6. The jury, after hearing the evidence and making all needful enquiries, shall deliver to the coroner their inquisition, wherein they shall state the name of the deceased, (if it be known,) the material circumstances attending his death, and if they find that he came to his death by unlawful violence, who were guilty thereof, either as principal or accessory. The inquisition may be to the following effect: "*county (or corporation of) to wit: An inquisition taken at , in the county (or corporation) of , on the day of , in the year , before , a coroner of the said county (or corporation,) upon the view of the body of , (or a person unknown,) there lying dead. The jurors sworn to enquire when, how and by what means the said (or person,) came to his death, upon their oaths do say: (Then insert when, how and by what person, means, weapon or instrument, he was killed, and any material circumstances.) In testimony whereof, the said coroner and jurors hereto set their hands.*"

1 R. C. id. § 17.
1847-8, id. § 9.

§ 7. The coroner shall return to his county or corporation court the inquisition, written testimony and recognizances by him taken; and if the jury find that murder, manslaughter or assault, had been committed on the deceased, shall require such witnesses as he thinks proper, to give a recognizance to appear and testify at such court when it sits for the examination or trial of the accused.

1 R. C. p. 288,
§ 9; p. 290,
§ 20 to 25.
1847-8, p. 136,
§ 10.
Post. ch. 204.

§ 8. If a person, charged with the offence by the inquest, be not in custody, the coroner may, for his apprehension, issue process in the same manner as a justice; it shall be returnable before a justice, and proceeded on as directed by chapter two hundred and four.

1 R. C. p. 290,
§ 19.

§ 9. If the dead person be a stranger, whether an inquest be taken, or the coroner, called on to view the body, thinks it

unnecessary to have an inquest, he shall cause the body to be decently buried. If the coroner certify that he believes the deceased has not sufficient estate in this state to pay the expenses of the burial, the coroner's fees, and the expenses of the inquest, if one was taken, they shall, when allowed by the court of the coroner's county or corporation, be paid out of the treasury. In other cases, all such charges shall be paid out of the estate of the deceased, if he be a free person, or if a slave, by his owner; or if the estate of the deceased or his owner be insufficient, by the county or corporation aforesaid, unless the inquest be on the body of a convict in the penitentiary; in which case the same shall be paid out of the treasury, after being allowed by the executive.

§ 10. In taking an inquest, the coroner may require one or more physicians to attend, and give information and render services, incident to his profession, useful to the jury; and reasonable compensation therefor shall be allowed, as part of the cost of the inquest.

§ 11. If a coroner fail to perform any duty, herein required of him, he shall forfeit one hundred dollars. In case of such failure, or if there be no coroner authorized to act, or none in the neighbourhood in which the dead body may be found, a justice of the court by which the nomination of a coroner so authorized was or might be made, may act as coroner, and be entitled to the same fees, and be subject to the same penalties.

§ 12. Under this chapter, proceedings may be had for summoning a jury and witnesses, and an inquest may be held, as well on Sunday as on any other day.

CHAPTER CCIII.

OF SEARCH WARRANTS.

SEC.

1. } How, when and for what things
2. } search warrant to issue.
3. How warrant directed; what to command.

SEC.

4. What to be done on seizure, under such warrant, of a slave or other property.

§ 1. If there be complaint on oath, that personal property has been stolen, embezzled or obtained by false pretences, and that it is believed to be concealed in a particular house, or other place, the justice or justices to whom complaint is made, if satisfied that there is reasonable cause for such belief, shall issue a warrant to search such place for the property.

§ 2. On like complaint, on oath, according to the nature of the case, the justice or justices to whom it is made, if satisfied that there is reasonable cause therefor, shall issue a warrant to search specified places for the following things:

First, Counterfeit or spurious coin, forged bank notes and other instruments or writings, or any tools, machines or materials for making them.

Secondly, Any book or other thing containing obscene language, or any print, picture, figure or description, manifestly tending to corrupt the morals of youth, and intended to be sold, loaned, circulated or distributed, or to be introduced into a family, school, or place of education.

Thirdly, Lottery tickets, or materials unlawfully made, provided or procured for drawing a lottery.

Fourthly, Any gaming apparatus or implements used, or kept and provided to be used, in unlawful gaming, or in any place resorted to for unlawful gaming.

Fifthly, Any fire-arms, sword or other weapon, or ammunition in possession of a negro.

Sixthly, Any harboured runaway slave.

2 R. C. p. 287,
§ 10.
1823-4, p. 38, ch.
35, § 3.
1833-4, p. 79, ch.
68, § 5.

§ 3. Every search warrant shall be directed to the sheriff, sergeant, or a constable of the county or corporation in which the place to be searched may be, and shall command him, if it be issued by one justice, to search, in the day time, the place designated; and if it be issued by two justices, to search the said place, either in the day or night, and in either case, to seize such stolen property, or other things, and bring the same and the persons in whose possession they may be found, before a justice or court having cognizance of the case.

1847-8, p. 161,
§ 3, 4.

Id. § 5.

§ 4. If any such search warrant be executed, by the seizure of any such runaway slave, he shall be returned to the owner or committed to jail, as a runaway, by the justice before whom he is brought; and if it be executed by the seizure of other property, or of any other of the things aforesaid, the same shall be safely kept by the direction of such justice or court, to be used in evidence; and as soon as may be afterwards, such stolen or embezzled property shall be restored to its owner, and the other things specified aforesaid, burnt or otherwise destroyed, under such direction.

CHAPTER CCIV.

OF ARREST, COMMITMENT AND BAIL.

SEC.		SEC.	
1. }	By whom and when process of	8.	Justice when to adjourn case, and
2. }	arrest issued.		how to proceed thereupon.
3.	When officer may pursue accused	9. }	Proceedings, when accused fails to
	into any county.	10. }	appear, or if he was committed.
4. }	Person arrested; before whom to	11. }	How justice to proceed in exami-
5. }	be brought.	12. }	nation.
6. }	Bail; when allowed and by whom.	13. }	
7. }			

SEC.

14. } When justice to discharge accused;
 15. } what to do when there is suffi-
 16. } cient cause to charge him.
 16. Recognizances certified to clerk of
 the court.
 17. Justice may associate other jus-
 tices with him.

SEC.

18. Party committed for misdemeanor,
 in certain cases to be discharged.
 19. When and to whom order dis-
 charging recognizance or su-
 perseding commitment to be
 returned.

Process of arrest; how issued and executed.

§ 1. A judge of the general court, or a justice may, in va-^{1847-8, p. 129,}
 cation, as well as in term time, issue process for the apprehen-^{ch. 15, § 1.}
 sion of a person charged with an offence.

§ 2. On complaint to any such officer, of a criminal offence, ^{Id. § 2.}
 he shall examine on oath the complainant and any other wit-^{7 and 8 Geo. iv.}
 nesses; and if he see good reason to believe that an offence ^{ch. 29, § 63.}
 has been committed, shall issue his warrant reciting the accu-^{9 and 10 Vict. ch.}
 sation, and requiring the person accused to be arrested and ^{25, § 13.}
 brought before a justice of the county or corporation; and, in
 the same warrant, may require the officer, to whom it is di-
 rected, to summon such witnesses as shall be therein named,
 to appear and give evidence on the examination.

§ 3. If a person charged with an offence, shall, after or at ^{1845-6, p. 64,}
 the time the warrant is issued for his apprehension, escape ^{ch. 86.}
 from or be out of the county or corporation in which the ^{1847-8, p. 130, § 4.}
 offence is alleged to have been committed, the officer, to whom ^{6 Rand. 678}
 the warrant is directed, may pursue and apprehend him any
 where in the state; or a justice of a county or corporation
 other than that in which it was issued, on being satisfied of
 the genuineness thereof, may endorse thereon his name and
 official character, and such endorsement shall operate as a
 direction of the warrant to an officer of such justice's county
 or corporation.

§ 4. An officer, arresting a person under a warrant for an ^{1847-8, p. 131,}
 offence, shall bring such person before, and return such war-^{§ 7, 8, 9.}
 rant to, a justice of the county or corporation in which the
 warrant issued, unless such person be let to bail as hereinafter
 mentioned, or it be otherwise provided.

§ 5. Where the warrant is issued in a county or corporation, ^{Id. § 3.}
 other than that in which the charge ought to be tried, the jus-
 tice before whom the accused is brought, shall by warrant
 commit him to an officer, that he may, and such officer shall,
 carry him to the county or corporation, in which the trial should
 be, and there shall take him before, and return such warrant
 to, a justice thereof.

Bail.

§ 6. A county or corporation court, or a justice thereof, in ^{1 R. C. p. 595,}
 vacation, may let to bail a person who is charged with, but ^{ch. 167, § 1, 2;}
 not convicted of, an offence not punishable with death or con-^{p. 598, § 3.}
 finement in the penitentiary, or of which, if it be so punish-^{1847-8, p. 137,}
^{ch. 17, § 1, 2;}
^{p. 133, § 28.}

5 Rand. 646, 711.
11 Leigh 665, 677.

able, only a light suspicion of guilt falls on him. If the offence be so punishable, and there is good cause to believe such person guilty, he shall not be let to bail, by a justice or justices, either in or out of court; and in no case shall a person, in jail under an order of commitment, be admitted to bail by a justice (in vacation) in a less sum than was required by such order. But a circuit court, or the general court, or any judge thereof, may admit any person to bail before conviction.

1847-8, p. 130,
§ 3, 5.

§ 7. A person charged with an offence, not so punishable, and to be carried to another county or corporation, shall, if he request it in the county or corporation wherein he is arrested, be brought before a justice thereof. In such or any case of a person charged with an offence not so punishable, if he desire it, a court, judge or justice, before whom he is brought, may, without trial or examination, let him to bail, upon taking a recognizance for his appearance before the court having cognizance of the case, the fact of taking which shall be certified, by the court or officer taking it, upon the warrant under which such person was arrested, and the warrant and recognizance shall be returned, forthwith, to the clerk of the court before which the accused is to appear; to which court, the judge or justice, who issued such warrant, shall recognize or cause to be summoned, such witnesses as he may think proper.

Examination or trial before justice.

Id. § 10.

§ 8. A justice may adjourn an examination or trial, pending before him, not exceeding ten days at one time, without the consent of the accused, and to any place in the county or corporation; in such case, if the accused be charged with an offence punishable with death or confinement in the penitentiary, he shall be committed to jail, otherwise he may be recognized for his appearance at the time appointed for such further examination or trial, or for want of bail be committed to jail.

Id. § 11.

§ 9. If the person so recognized do not appear at the time so appointed, the said justice shall certify the recognizance and the fact of such default to the county or corporation court at its next term, and like proceedings shall be had thereon, as on breach of a recognizance for appearance before such court.

Id. § 12.

§ 10. If the accused is committed, it shall be by an order of the justice, stating that he is committed for further examination on a day specified in the order, and on that day he may be brought before the justice, by his verbal order to the officer by whom he was committed, or by a written order to a different person.

Id. § 13, 14

§ 11. The justice, before whom any person is brought for an offence, shall, as soon as may be, in the presence of such person, examine on oath the witnesses for and against him, and he may be assisted by counsel.

Id. § 15.

§ 12. While a witness is under such examination, all other

witnesses may, by order of the justice, be excluded from the place of examination and kept separate from each other.

§ 13. When the justice deems it proper, the testimony of ^{1847-8, p. 130,} the witnesses may be reduced to writing; and the same, if ^{§ 16.} required by him, shall be signed by them respectively.

§ 14. The justice shall discharge the accused, if he consider ^{Id. § 17, 18, 23,} that there is not sufficient cause for charging him with the ^{24.} offence; and when he is not trying him, under chapter two ^{1 R. C. p. 598, § 1.} hundred and twelve, shall commit him to jail, if he consider ^{1848-9, p. 49, ch.} that there is such cause, or let him to bail under the sixth ^{93, § 1.} section. He shall require recognizances, with or without sure- ^{2 Va. Cas. 504.} ties, as he deems proper, from all material witnesses against ^{Post. ch. 212.} the accused.

§ 15. When a justice so considers, that there is sufficient ^{1847-8, p. 132,} cause for charging the accused with the offence, if the accused ^{§ 18 to 22.} be entitled to an examining court, the commitment shall be for examination, and the recognizances be for appearance before such examining court, as is provided by chapter two hundred and five; and if he be not so entitled, unless it be a case ^{Post. ch. 205.} wherein it is otherwise specially provided, the commitment ^{Ante, p. 746, ch.} shall be for trial, and the recognizances be for appearance, in ^{198, § 25.} the county or corporation court, at such time as the case can be proceeded in before such court. The justice shall return to the clerk of such court, as soon as may be, a certificate of the nature of the offence, shewing whether the accused was committed or bailed therefor; and the clerk, as soon as may be, shall inform the attorney for the commonwealth, in said court, of such certificate.

§ 16. Every examination and recognizance taken under this ^{1847-8, p. 133,} chapter shall, by the judge or justice taking it, be certified to ^{§ 29.} the clerk of the court before which the party charged is to appear, on or before the first day of its session. If he fail, he may be compelled to do so, by attachment as for a contempt.

§ 17. A justice to whom complaint is made, or before whom ^{Id. § 27.} a prisoner is brought, may associate with himself one or more justices of the county or corporation, and they may together execute the powers and duties before mentioned.

When judge or justice may supersede commitment or discharge recognizances.

§ 18. If a person be in jail, or under recognizance to an- ^{Id. § 30.} swer a charge of assault and battery or other misdemeanor, for which there is a remedy by civil action, unless the offence was committed by or upon a sheriff or other officer of justice, or riotously, or with intent to commit a felony, if the party injured appear before the judge or justice who made the commitment or took the recognizance, and acknowledge, in writing, that he has received satisfaction for the injury, such judge or justice, in his discretion, may, by an order under his hand, supersede the commitment, or discharge the recognizances as to the accused and the witnesses.

1847-8, p. 133,
§ 30, 31.

§ 19. Every order, discharging a recognizance, shall be filed with the clerk, before the session of the court at which the party was to appear, and an order superseding a commitment shall be delivered to the jailor, who shall forthwith discharge the witnesses (if any) and the accused, and against him judgment shall be entered, in the said court, for the costs of the prosecution.

CHAPTER CCV.

OF EXAMINING COURTS.

SEC.

1. } When and where, examining court
2. } held.
3. When a justice determines on a special session.
4. } How court composed and its
5. } power to adjourn, &c. Case to
6. } be tried before end of third term.
7. } When to discharge prisoner;
8. } when to remand him.
9. } When prisoner admitted to bail;
9. } proceedings thereon.

SEC.

10. Clerk's duty when prisoner remanded.
11. Effect of prisoner's discharge.
12. When accused to be tried in court whose jail is not that of examining court; what to be done.
13. When accused guilty of misdemeanor, what court to do.
14. *Venire facias*, and by whom issued.

When and where held.

1 R. C. p. 601, § 8.
1847-8, p. 138, ch.
18, § 1, 2.
1848-9, p. 49, ch.
93.

§ 1. Before a white person charged with a felony, or a free negro charged with felonious homicide or any offence punishable with death, is tried before a circuit court or the general court, he shall be examined* as hereinafter provided, unless, by his assent entered of record in such court, such examination be dispensed with.

Id.

§ 2. Every such examination shall be had before the court of the county or corporation in which the offence was committed or may be prosecuted, and may be before the said court at a regular term, or special session thereof, as the justice, (who considers that there is sufficient cause for charging with the offence the person accused thereof,) may, in his discretion, determine.

1 R. C. p. 598, ch.
169, § 1.
1848-9, p. 49, ch.
93, § 1.
2 Va. Cas. 135.
1 Rob. 691.

§ 3. If a justice determine on a special session of such county or corporation court, for any such examination, he shall forthwith issue his warrant to the officer of such court, requiring him to summon at least eight of the justices (if so many there be,) of the county or corporation, to meet (for the examination of the fact,) at their courthouse on such day as said justice shall appoint, not being less than five, nor more than ten days after the date of the warrant.

* See 1 Va. Cas. 128, 144, 301; 2 Va. Cas. 205, 379, 396; 5 Leigh 715; 9 Leigh 683; 10 Leigh 693; 11 Leigh 643.

§ 4. Every such court, whether at its regular term or at such special session, shall consist of at least five of the justices of the county or corporation. The justice who committed or recognized the accused for examination shall not, without the consent of the accused entered of record, be one of the examining court.

§ 5. The court at any such special session, may adjourn the examination to the next regular term, quarterly or monthly, or to an earlier day; and at a regular term may continue any examination from term to term, so that such continuance, except on the motion of the accused, or by reason of the witnesses for the commonwealth being enticed or kept away, or prevented from attending by sickness or some inevitable accident, shall not be beyond the third regular term after the examination was ordered. But if an examination be commenced at any term, such term may be extended until the examination is concluded.

§ 6. Upon any such examination, if it appear to the court, that there is not probable cause for charging the accused with the offence, he shall be discharged.

§ 7. If it appear, on the examination of such negro or person as is mentioned in the first section, that a felony has been committed, and that there is probable cause to charge the accused therewith, the court shall remand him for trial in the circuit court or general court having cognizance of the case, take the depositions of all material witnesses on such examination, and require of them and such as the accused may desire on his behalf, a recognizance for their attendance at the trial.

§ 8. Should the court be of opinion that the accused is entitled to bail, it shall let him to bail if he give sufficient bail, or if he do not then give it, shall enter of record that he is entitled to bail and in what sum, and he may thereafter be admitted to bail by any justice.

§ 9. When a justice admits such person to bail, he shall transmit the recognizance to the clerk of the said circuit or general court, and issue a warrant for the discharge of the prisoner from jail, upon which he shall be discharged therefrom, if detained for no other cause.

§ 10. When a person is remanded as aforesaid by a county or corporation court, the clerk thereof shall certify to the clerk of the court in which he is to be tried, copies of all recognizances taken by the said examining court, and to the attorney prosecuting for the commonwealth, in the court wherein the trial is to be, a copy of the order remanding the accused, and of the depositions taken on the examination, and of any warrant in the case which remains filed in the clerk's office.

§ 11. If the court in which a person is examined as aforesaid, discharge him, he shall not thereafter be questioned or tried for the same offence.

§ 12. If the accused be remanded for trial in a court whose jail is not the jail of the examining court, the latter court, by

1 R. C. id. § 1, 5.
1847-8, p. 138, ch.
18, § 2.
1848-9, p. 50, ch.
93, § 1.

1 R. C. p. 600, § 6.
1847-8, p. 138, § 2.
1848-9, p. 50, ch.
93, § 1.

1 R. C. p. 598, § 1.
1847-8, p. 138, § 3.
1848-9, p. 50, § 1.

Id.
1 Va. Cas. 134,
300.
6 Rand. 685.

1 R. C. p. 598, 9,
§ 1, 2,
1847-8, p. 138, 9,
§ 4.
7 Leigh 640.
3 Grat. 82, 214.

1 R. C. p. 599, § 2.
1847-8, p. 138, § 5.

1 R. C. p. 599,
§ 4; p. 610, § 40.
1847-8, p. 139, § 6.
1 Va. Cas. 300.

1 R. C. p. 601, § 7.
1847-8, p. 139, ch.
18, § 8.
1 Va. Cas. 188.

1 R. C. p. 598,
ch. 169, § 1.
1847-8, p. 139, § 9.

its order, or if it fail, any two justices of the county or corporation, by their warrant, shall direct the officer of such court to (and he shall) remove the prisoner to the jail of the court in which he is to be tried, and the jailor thereof shall receive and keep him safely until discharged by law.

1 R. C. p. 598,
ch. 159, § 1; p.
693, § 10.
1830-31, p. 106,
ch. 38.
1847-8, p. 139,
§ 10.

§ 13. If such examining court be of opinion that the accused is guilty of a misdemeanor for which he ought to be tried in the county or corporation court, he shall, unless let to bail, be committed to jail to answer an indictment against him in such court; which indictment may be preferred so soon as there may be a grand jury in said court. The court shall recognize, or cause to be summoned in the case, such witnesses and to such time as may appear to it proper.

1 R. C. p. 601,
§ 9.
1847-8, p. 139,
§ 11.
3 Grat. 594.

§ 14. The clerk of a county or corporation court which determines that a person ought to be tried in the circuit or general court, shall as soon as may be issue a *venire facias*, directed to the officer of the court in which the trial is to be, requiring him to summon jurors for such trial.

CHAPTER CCVI.

OF GRAND JURIES.

SEC.

1. } Grand juries for the several courts;
2. } when, and how summoned.
3. }
4. } Who qualified, number summoned,
5. } and necessary to constitute grand
6. } jury.
7. } Oath of foreman and others of the
8. } jury.
9. } Charge to be given them.

SEC.

8. Duties of grand jury.
9. How indictment to be found, &c.
10. Indictment ignored, may be sent to another grand jury.
11. When another foreman may be sworn, or another jury summoned.
12. Penalties on jurors and officers of court.

1847-8, p. 141,
§ 14.

§ 1. The clerk of the general court, on the order of said court, or a judge thereof in vacation, or when it appears to such clerk, from recognizances sent to him, that a felony is to be tried in said court, shall issue a writ to the sheriff of the county of *Henrico*, requiring him to summon a grand jury to attend such court, which he may execute in or out of said county.

1 R. C. p. 264,
ch. 75, § 1.
1847-8, p. 140, ch.
19, § 1.

§ 2. There shall be a grand jury at each term of a circuit court, except a term merely for the trial of civil causes; and at each quarterly term of the court for any county or corporation, except the corporation of *Richmond*; and at the terms of the corporation court of *Richmond*, in February, May, August and November.

1 R. C. id. § 2.
1847-8, id. § 2.

§ 3. The officer of any such court shall, before the first day of a term thereof, at which there is to be such grand jury, summon persons to attend on that day to act on the grand jury.

§ 4. For every grand jury there shall be summoned twenty-four citizens of this state, who are freeholders of the county or corporation in which the court is to be held, and in other respects qualified jurors,* and not constables, ordinary keepers, surveyors of roads, nor owners nor occupiers of water grist mills; and when they are grand jurors for a county court, not inhabitants of a town having a corporation court.

§ 5. Any sixteen or more of such persons shall be a competent grand jury. If a sufficient number do not attend, the said officer shall forthwith summon so many others as may be necessary.

§ 6. From among the persons so summoned who attend, the court shall select a foreman, who shall be sworn as follows:

"You shall diligently enquire and true presentment make of all such matters as may be given you in charge or come to your knowledge touching the present service. You shall present no person through ill will, nor leave any unrepresented through fear or favour, but in all your presentments you shall present the truth, the whole truth, and nothing but the truth. So help you God." The other grand jurors shall afterwards be sworn as follows: *"The same oath that your foreman has taken on his part, you and each of you shall observe and keep on your part. So help you God."*

§ 7. The grand jury, after being sworn, shall be charged as to their duty, in the general court by the presiding judge, in a circuit court by the judge, and in a county or corporation court by the prosecuting attorney, and shall then be sent to their room.

§ 8. The grand jury shall enquire of and present all felonies, misdemeanors and violations of penal laws committed in the jurisdiction of the respective courts wherein they are sworn, except that no presentment shall be made in a circuit court of a matter for which there is no corporal punishment, but only a fine, where the fine is limited to an amount not exceeding five dollars, nor in a county or corporation court, of such a matter, where the fine is limited to an amount not exceeding two dollars.

§ 9. At least twelve of the grand jury must concur in finding or making an indictment or presentment. They may make a presentment upon the information of two or more of their own body, and when a presentment is so made, or on the testimony of witnesses called on by the grand jury, or sent to it by the court, the names of the grand jurors giving the information, or of the witnesses, shall be written at the foot of the presentment.

§ 10. Although a bill of indictment be returned not a true bill, another bill of indictment against the same person for the same offence, may be sent to and acted on by the same or another grand jury.

§ 11. If the foreman or any grand juror be unable or fail

* See 2 Va. Cas. 20, 318, 319; 2 Leigh 739; 5 Leigh 743; 7 Leigh 747; 9 Leigh 639, 651; 2 Rob. 826; 4 Grat. 536.

1 R. C. p. 264, ch. 75, § 1, 2, 1847-8, p. 139, 140, § 2, 15.

1 R. C. id. 1847-8, p. 140, § 2, 3. 8 Leigh 722.

1 R. C. p. 265, § 3. 1847-8, p. 139, § 4, 5, 15.

1847-8, p. 141, § 6.

1 R. C. p. 264, § 1, 2, 5. 1820-21, p. 34, ch. 33. 1847-8, p. 141, § 7. 2 Va. Cas. 171. 10 Leigh 673. 3 Grat. 624.

1 R. C. p. 265, § 8; p. 611, § 47. 1847-8, p. 141, § 8, 9. 5 Grat. 702.

1 R. C. id. 1847-8, id.

1 R. C. p. 266, § 2, 9.

1847-8, p. 141,
§ 10, 12.

4 Leigh 645.

1 R. C. p. 265,
§ 6; p. 267, § 17.

to attend, after being sworn, another may be sworn in his stead. And when one grand jury has been discharged, another may, by order of the court, be summoned to attend at the same term.

§ 12. A court, whose officer shall fail, when it is his duty, to summon a grand jury and return a list of their names, shall fine him twenty dollars. A person summoned, and failing to attend a court as a grand juror, shall be fined by said court eight dollars, unless, after being summoned to shew cause against the fine, he give a reasonable excuse for his failure.

CHAPTER CCVII.

OF PRESENTMENTS, INDICTMENTS AND INFORMATIONS, AND PROCESS THEREON.

SEC.		SEC.	
1.	Form of prosecutions; when in-	20.	To whom person arrested to be
2.	formation to be filed.		delivered.
3.	Cases in which there is a prose-	21.	When he is to be admitted to bail.
4.	cutor.	22.	When no information to be filed,
5.	Certain forms dispensed with in		but summons to issue, &c.
10.	to specific prosecutions.	23.	In prosecution for certain of-
11.	What defects in indictments not		fences against public policy, or
12.	to vitiate; before or after verdict.		against the tax laws, or for vio-
13.	When accused discharged, if not		lating police laws in respect to
	indicted in a certain time.		slaves; how process to issue and
14.	When not indicted by reason of		be proceeded on.
	his insanity at the time of act.	24.	Defects of form in presentments,
15.	What process to issue on present-		&c., under two preceding sec-
16.	ment, &c.		tions.
17.	To whom process directed. Se-	25.	Process in certain prosecutions for
18.	veral of such processes may issue		misdemeanor.
	at same time. How to be sent,	26.	What shall not work discontinu-
	&c.		ance of a prosecution.
19.	Process of arrest may be executed	27.	When judgment of outlawry ren-
	in any part of the state.		dered, or corrected, &c.
		29.	What judgment in outlawry to be
			rendered.

Of presentments, indictments or informations; and the prosecutor.

1847-8, p. 142, ch.
20, § 1.

9 Leigh 665.

§ 1. Prosecutions for offences against the commonwealth, unless otherwise provided, shall be by presentment, indictment or information. The trial of a white person, on a charge of felony, or of a free negro for a felonious homicide or a felony punishable with death, shall always be by indictment.

1 R. C. p. 611,
§ 45.
1847-8, p. 142, § 2

§ 2. No information shall be filed unless by leave of the court entered of record, nor unless the accused, being summoned for that purpose, fail to shew good cause to the contrary.

§ 3. In a prosecution for a misdemeanor, the name of the prosecutor, if there be one, and the county or corporation of his residence, shall be written at the foot of the presentment, indictment or information, when it is made, found or filed; and, for good cause, the court may require a prosecutor to give security for the costs, and if he fails to do so, dismiss the prosecution at his costs.

§ 4. If any proceeding for an offence, had or moved at the instance of a prosecutor, be dismissed, or the accused discharged from the accusation, the court or justice before whom the proceeding is, may give judgment against the prosecutor in favour of the accused for his costs.

§ 5. In an indictment or accusation of perjury or subornation of perjury, it shall be sufficient to state the substance of the offence charged against the accused, and in what court or by whom the oath was administered which is charged to have been falsely taken, and to make an averment that such court or person had competent authority to administer the same, together with the proper averments to falsify the matter wherein the perjury is assigned, without setting forth any part of any record or proceeding at law or equity, or the commission or authority of the court or person before whom the perjury was committed; but nothing herein shall be construed to allow, without the consent of the accused, a part only of any record, proceeding, or writing, to be given in evidence on the trial of such indictment or accusation.

§ 6. In a prosecution against a person accused of embezzling, or fraudulently converting to his own use, bullion, money, bank notes, or other security for money, it shall be lawful, in the same indictment, to charge, and thereon to proceed against the accused for, any number of distinct acts of such embezzlement or fraudulent conversion, which may have been committed by him within six months from the first to the last of such acts; and it shall be sufficient to allege the embezzlement or fraudulent conversion to be of money, without specifying any particular money, gold, silver, note or security; and such allegation, so far as it regards the description of the property, shall be sustained, if the accused be proved to have embezzled any bullion, money, bank note, or security for money, (although the particular species be not proved.)

§ 7. In a prosecution for forging, or altering, or attempting to employ as true, any forged instrument or other thing, it shall not be necessary to set forth any copy or *fac simile* thereof, but it shall be sufficient to describe the same in such manner, as would sustain an indictment for stealing such instrument or other thing, supposing it to be the subject of larceny.

§ 8. In a prosecution for an offence, committed upon or relating to or affecting real estate, or for stealing, embezzling, destroying, injuring or fraudulently receiving or concealing, any personal estate, it shall be sufficient to prove, that when the offence was committed, the actual or constructive posses-

sion, or a general or special property, in the whole or any part of such estate, was in the person or community alleged, in the indictment or other accusation, to be the owner thereof.

1847-8, p. 143, § 9.
2 Va. Cas. 337.

§ 9. Where an intent to injure, defraud or cheat, is required to constitute an offence, it shall be sufficient, in an indictment or accusation therefor, to allege generally an intent to injure, defraud or cheat, without naming the person intended to be injured, defrauded or cheated, and it shall be sufficient, and not be deemed a variance, if there appear to be an intent to injure, defraud or cheat the *United States* or any state, or any county, corporation, officer or person.

6 and 7 Vict. ch.
83, § 2.

§ 10. All allegations, unnecessary to be proved, may be omitted in any indictment or other accusation.

1 R. C. p. 610,
§ 41, 2, 3.
1826-7, p. 28, ch.
30, § 3.
1847-8, p. 144,
§ 10.

6 and 7 Vict. ch.
83, § 2.

9 and 10 Vict.
ch. 62.

1 Va. Cas. 122.

2 Va. Cas. 162.

6 Rand. 685.

8 Leigh 721.

5 Grat. 694.

§ 11. No indictment or other accusation shall be quashed or deemed invalid for omitting to set forth, that it is upon the oaths of the jurors, or upon their oaths and affirmation; or for the insertion of the words "*upon their oath*," instead of "*upon their oaths*;" or for not in terms alleging, that the offence was committed "*within the jurisdiction of the court*," when the averments shew that the case is one of which the court has jurisdiction; or for the omission or misstatement of the title, occupation, estate or degree of the accused, or of the name or place of his residence; or for omitting the words "*with force and arms*," or the statement of any particular kind of force and arms; or for omitting to state, or stating imperfectly the time at which the offence was committed, when time is not the essence of the offence; or for failing to allege the value of an instrument which caused death, or to allege that it was of no value; or for omitting to charge the offence to be "*against the form of the statute*," or *statutes*; or for the omission or insertion of any other words of mere form or surplusage. Nor shall it be abated for any misnomer of the accused; but the court may, in case of a misnomer appearing before or in the course of a trial, forthwith cause the indictment or accusation to be amended according to the fact.

1 R. C. p. 611,
§ 44.

1847-8, p. 144,
§ 11.

1 Va. Cas. 1.

2 Va. Cas. 94, 122.

2 Leigh 709.

4 Leigh 675.

2 Grat. 629.

§ 12. Judgment in any criminal case, after a verdict, shall not be arrested or reversed, upon any exception to the indictment or other accusation, if the offence be charged therein with sufficient certainty for judgment to be given thereon, according to the very right of the case.

Accused discharged if not tried in term; process, &c., after presentment, &c.

1 R. C. p. 607,
§ 28.
1847-8, p. 144,
§ 12.

§ 13. A person in jail, on a criminal charge, shall be discharged from imprisonment if he be not indicted before the end of the second term of the court, at which he is held to answer, unless it appear to the court, that material witnesses for the commonwealth have been enticed or kept away, or are prevented from attending, by sickness or inevitable accident, and except also in the case provided in the following section.

§ 14. When a person in jail, on a charge of having committed an indictable offence, is not indicted by reason of his insanity at the time of committing the act, the grand jury shall certify that fact to the court; whereupon the court, in its discretion, may order him to be sent to one of the lunatic asylums of the state, or to be discharged. 1847-8, p. 144, § 13.

§ 15. Upon a presentment of a felony, for which the party charged has not been arrested, the presiding judge or justice shall issue a warrant to any sheriff, sergeant or constable, commanding him to arrest such party, and carry him before a justice of the county or corporation in which he ought to be tried, and to summon the witnesses on whose information the presentment was made, to appear and testify before the justice. The justice to whom such warrant is returned, shall proceed in the case as if the warrant had been issued by himself. 1 R. C. p. 605-6, § 20. 1847-8, p. 145, § 16.

§ 16. When a presentment is made, or information filed, in a case other than that provided for in the preceding section, the court shall award process against the accused, to answer the same. Such process, if the prosecution be for a felony, shall be a *capias*; if it be for a misdemeanor, for which an infamous or corporal punishment may be inflicted, it may be a *capias* or a summons, at the discretion of the court; in all other cases it shall be, in the first instance, a summons; but if a summons be returned executed, or two be returned not found, and the defendant do not appear, the court may award a *capias*. 1 R. C. p. 604, § 16, 17; p. 612, § 52. 1847-8, p. 145, § 17, 18, 30. 3 H. & M. 575. 1 Va. Cas. 155. 2 Va. Cas. 200. 3 Leigh 743. 5 Leigh 743.

§ 17. The second section of chapter one hundred and seventy shall apply to process in criminal as well as in civil cases. And the court may, in the same case against the same person, award at the same time, or different times, several writs of summons or *capias*, directed to officers of different counties or corporations. An officer having a *capias* under which the accused is let to bail, shall give him a certificate of the fact, which shall protect him against any other *capias*, which may have been issued for the same offence. Ante, p. 642, ch. 170, § 2. 1 R. C. p. 604, § 17; p. 612, § 53. 1827-8, p. 27, ch. 36, § 2. 1847-8, p. 145, § 17, 19, 20.

§ 18. The clerk of every court shall forward, by mail, all process issued for the commonwealth, directed to the officer of any county or corporation, other than his own, and pay the postage thereon, which, on being duly certified by the court, shall be paid out of the treasury. 1827-8, p. 28, ch. 36, § 2. 1841-2, p. 49, ch. 85, § 1. 1847-8, p. 145, § 21.

§ 19. When process of arrest, in a criminal prosecution, is issued from a court during its session, either against a party accused or a witness, the officer, to whom it is directed, or delivered, may execute it in any part of the state. 1 R. C. p. 605, § 18. 1847-8, p. 146, § 26.

§ 20. An officer who, under a *capias* from a court, arrests a person accused of an offence not bailable, or for which bail is not given, shall deliver the accused to such court if sitting, or to the jailor thereof, who shall receive and imprison him. 1 R. C. p. 604, § 17. 1827-8, p. 28, § 2. 1847-8, p. 146, § 22.

§ 21. A person arrested on a *capias*, to answer or hear judgment on a presentment, indictment or information for a misdemeanor, (other than such as is mentioned in the first section of 1 R. C. p. 606, § 21, 22. 1847-8, p. 146, § 23, 24.

Ante, p. 742, ch.
198, § 1.

chapter one hundred and ninety-eight,) or on an attachment, (other than an attachment to compel the performance of an order or decree in chancery,) may be admitted to bail by the officer who arrests him; the said officer taking a recognizance in such sum, not being less than two hundred dollars, as he, regarding the case and the estate of the accused, may deem sufficient to secure his appearance before the court from which the process issued, at the time required thereby. The officer shall return the recognizance to said court on or before the return day of such process. If he fail to make such return, he shall forfeit twenty dollars; and if he take insufficient bail, he shall be fined at the discretion of a jury.

1 R. C. p. 614,
§ 65.
1847-8, p. 146,
§ 27.

2 Leigh 721.
10 Leigh 676.

§ 22. No information need be filed on a presentment of an offence, for which there is no punishment but a fine or forfeiture limited to an amount not exceeding twenty dollars. But a summons to answer such presentment, may be issued against the accused, and if it be served ten days before the return day thereof, and he do not appear, judgment may be rendered against him for the penalty. If he appear, the court may, without a jury, hear and determine the matter, and give judgment thereon.

1 R. C. p. 568,
§ 21; p. 614, § 65.
1845-6, p. 66, ch.
92.
1847-8, p. 146,
§ 28.
Ante, p. 746, ch.
198.
Ante, p. 206, ch.
38.
Ante, p. 459, ch.
104.

2 Va. Cas. 19.
2 Leigh 721.

§ 23. On any indictment or presentment, (not embraced in the preceding section,) founded on any provision of chapter one hundred and ninety-eight, (except the twenty-third and twenty-sixth sections thereof,) or on any provision of chapter thirty-eight or chapter one hundred and four, process shall be issued immediately. If the accused appear and plead to the charge, the trial shall proceed without delay. If being summoned he fail to appear and plead, the court may render judgment in the same manner as if he had confessed the charge in court, and if the offence be punishable by a fine, not fixed by law, a jury shall be empaneled to assess the same. And if on a rule to shew cause why an information should not be filed, the defendant, after service of the rule, fail to appear and shew cause, and the information be filed, the court may proceed to give judgment on such information as upon an indictment.

1 R. C. p. 568,
§ 20, 21; p. 614,
§ 65.
1847-8, p. 147,
§ 29.

2 Va. Cas. 513.

§ 24. No exception shall be allowed, for any defect or want of form in any presentment, indictment or information mentioned in either of the two preceding sections, but the court shall give judgment thereon, according to the very right of the case.

1843-4, p. 57, ch.
74, § 1.
1847-8, p. 147,
§ 30.

§ 25. In prosecutions for misdemeanors, in cases not embraced by the twenty-third section, if a *capias* be returned not found, after a summons is returned executed, or if the accused was admitted to bail and make default, the court may either award a new *capias*, or proceed to trial in the same manner as if the accused had appeared and pleaded not guilty.

1843-4, id. § 2.
1847-8, id. § 31.

2 Va. Cas. 61, 62,
470.

§ 26. There shall be no discontinuance of any criminal prosecution, by reason of the failure of the court to award process, or to enter a continuance on the record.

§ 27. Judgment of outlawry shall be rendered by the circuit court of the county or corporation in which the prosecution is, and may be reviewed, corrected or reversed, on motion, or by writ of error *coram nobis*. 1838, p. 75, ch. 98.
1839, p. 46, ch. 73.
1847-8, p. 147, § 32, 33.

§ 28. When a person is outlawed, the same judgment, execution and disabilities, shall ensue and be awarded, as if he were convicted of the offence with which he was charged. 2 Va. Cas. 241, 244, 245.
Id.
1 R. C. p. 609, § 38.

CHAPTER CCVIII.

OF TRIAL AND ITS INCIDENTS.

SEC.

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34. When one count good and others faulty.
35. When jury agree as to some and disagree as to others of the accused.
36. Within what time a charge of felony must be tried.
37. When question adjourned to general court.

When and where felony is tried; presence, plea and privilege of accused.

§ 1. The trial of a judge of the general court, charged with felony, shall be only in that court; a trial of any other white person for felony, and of a free negro for felonious homicide or any felony punishable with death, shall be in a circuit court. 1 R. C. p. 223, § 20.
1847-8, p. 153, § 50.

§ 2. When an indictment is found against a person for felony, in a court wherein he may be tried, the accused, if in custody, or if he appear according to his recognizance, shall, unless good cause be shewn for a continuance, be arraigned and tried at the same term. He shall be allowed counsel, if he desire it, to assist him in his defence; and a copy of the indictment, and of the list of jurors summoned for his trial, shall 1 R. C. p. 607, § 24, 27.
1845-6, p. 63, § 2.
1847-8, p. 148, ch. 21, § 1, 3, 6.

be furnished him, without fee, upon his request, at any time before conviction.

1 R. C. p. 609,
§ 38.
1847-8, p. 148, § 2,
4.

1 Va. Cas. 172.
9 Leigh 623.

§ 3. A person indicted for felony shall be personally present during the trial therefor. If, when arraigned, he will not plead or answer and do not confess his guilt, the court shall have the plea of not guilty entered, and the trial shall proceed as if the accused had put in that plea.

Of the jury, in criminal cases.

1 R. C. p. 601, § 9;
p. 603, § 13.
1845-6, p. 62, § 1.
1847-8, p. 148, § 4,
19.
See ante, p. 628,
ch. 163.
4 Leigh 679.
3 Grat. 629.

§ 4. In a case of felony, in which a writ of *venire facias* is necessary, the writ shall command the officer charged with its execution, to summon twenty-four persons, freeholders of his county or corporation, residing remote from the place where the offence is charged to have been committed, and qualified in other respects to serve as jurors, to attend the court wherein the accused is to be tried, on the first day of the next term of said court, or at such other time as the court may direct. If a person, summoned under such writ, fail to attend as required, without sufficient excuse, he shall be fined by the court eight dollars.

1847-8, p. 149,
§ 13.

§ 5. If a person accused of felony be not tried at the term of a superior court to which he is remanded for trial, the clerk thereof shall, at least twenty days before any subsequent term that the case remains pending, issue a *venire facias* for his trial, returnable to the first day of such term, or such other day as the court may direct.

Id. § 14.

§ 6. Any superior court in which a person accused of felony is to be tried, may at any time cause a *venire facias* to issue for his trial.

1 R. C. p. 607,
§ 25.
1847-8, p. 149,
§ 17, 18.

§ 7. No challenge of a juror shall be allowed the commonwealth, except for cause, and all challenges shall be tried by the court in which they are made.*

1847-8, p. 149,
§ 15.

§ 8. A person whose opinions are such, as to prevent his convicting any one of an offence punishable with death, shall not be allowed to serve as a juror on a trial for such offence.

1 R. C. p. 601, § 9;
p. 607, § 26.
1845-6, p. 63, § 3.
1847-8, p. 148, § 7.
2 Va. Cas. 111.
5 Leigh 708.

§ 9. When any jurors, summoned under a writ of *venire facias*, fail to attend or are challenged for cause, or if the whole array be challenged, the court shall cause other jurors to be summoned in the county or corporation, until a panel of twenty-four jurors, free from exception, be completed. The accused shall have no peremptory challenge, except that he may strike from the panel not exceeding eight of the names thereon; and then the jury for the trial shall be composed of twelve of those not so stricken off, to be selected by lot.†

1845-6, p. 63, § 4.
1847-8, p. 149, § 8.

§ 10. In a criminal case in a superior court, if qualified

* Numerous cases as to what is good cause of challenge; see 10 Leigh 678; 11 Leigh 657.

† The revisors in a note at p. 1019 of their reports, referred to *Richards'* case, 11 Leigh 690, and *Brown's* case, id. 711, and stated that they intentionally omitted the act in 1 R. C. p. 266, § 13, and in 1847-8, p. 149, § 16, declaring that "*juries de medietate linguæ* may be directed by the courts respectively."

jurors, not exempt from serving, cannot be conveniently found in the county or corporation in which the trial is to be, the court may cause so many as may be necessary of such jurors, to be summoned from any other county or corporation by the sheriff or sergeant thereof, or by its own officer. Every juror, so summoned, shall be paid one dollar for each day he attends, and the same mileage as a witness in a civil case; and every juror residing in such county or corporation, and serving on such jury, shall be paid in like manner one dollar for each day he attends on such jury. Such jurors shall be forthwith paid by the officer of the court, and he shall be repaid out of the treasury on the order of the court.

§ 11. When, in a criminal case, the jury are kept together beyond the day on which they are empaneled, the court shall direct its officer to furnish them with suitable board and lodging while so confined. The expenses thereof, not exceeding one dollar for each juror, shall be paid out of the treasury when allowed by the court.

§ 12. If a juror, after he is sworn, be unable from any cause to perform his duty, the court may, in its discretion, cause another qualified juror to be sworn in his place. And in any criminal case, the court may discharge the jury, when it appears they cannot agree in a verdict, or that there is a manifest necessity for such discharge.

Two or more persons charged jointly; insane persons.

§ 13. The clerk of the court by which several persons are examined jointly for felony and remanded for trial in a superior court, shall issue a writ for a single *venire* for the trial of all of them.

§ 14. Persons indicted of felony, who elect to be tried jointly, shall be allowed to strike from the panel not more than eight thereof, and only such as all of them agree to strike from it.

§ 15. If persons, indicted jointly for felony, elect to be tried separately, the *venire*, summoned for their trial, may be used for him who is first tried, and the court shall award a several *venire facias* for the trial of each of the others.

§ 16. No person shall, while he is insane, be tried for a criminal offence.

§ 17. If a superior court, to which an examining court remands a person for trial, see reasonable ground to doubt his sanity at the time at which, but for such doubt, he would be tried, it shall suspend the trial, until a jury enquires into the fact as to such sanity. Such jury shall be empaneled at its bar. If the jury find the accused to be sane at the time of their verdict, they shall make no other enquiry, and the trial in chief shall proceed. If they find that he is insane, they shall enquire whether or no he was so, at the time of the alleged offence. If they find that he was so at that time,

1 R. C. p. 603,
§ 14.
1847-8, p. 150,
§ 22.

1845-6, p. 63, § 5.
1847-8, p. 149, § 9.
9 Leigh 613.
3 Grat. 567.

1847-8, p. 149,
§ 10.
3 Grat. 594.

1847-8, p. 149,
§ 11.
2 Va. Cas. 314.
3 Grat. 594.

1847-8, p. 149,
§ 12.

Id. p. 151, § 32.

Id. § 33 to 36.
2 Va. Cas. 262.

the court may dismiss the prosecution, and either discharge him, or, to prevent his doing mischief, remand him to jail, and order him to be removed thence to one of the lunatic asylums of this state. If they find that he was not so, at that time, the court shall commit him to jail, or order him to be confined in one of said asylums, until he is so restored that he can be put upon his trial.

§ 18. If, after conviction and before sentence of any person, the court see reasonable ground to doubt his sanity, it may empanel a jury to enquire into the fact as to his sanity, and sentence him, or commit him to jail or to a lunatic asylum, according as the jury may find him to be insane or sane.

1847-8, p. 151,
§ 37.
Ante, p. 392, ch.
85, § 29.

§ 19. When the board of directors of the lunatic asylum shall give notice to the clerk of the court, in pursuance of the twenty-ninth section of chapter eighty-five, such clerk shall issue a precept to the officer of said court, requiring him to bring the said prisoner from the asylum and commit him to jail.

1847-8, p. 151,
§ 38.

§ 20. When a prisoner is so brought from the asylum and committed to jail, or when it is found by the verdict of another jury, that a prisoner, whose trial or sentence was suspended by reason of his being found to be insane, has been restored, if convicted he shall be sentenced, and if not, the court shall proceed to try him, as if no delay had occurred on account of his insanity.

Id. § 39.

§ 21. When a prisoner, tried for an offence, is acquitted by the jury by reason of his being insane, the verdict shall state the fact; and thereupon the court may, if it deems him dangerous, order him to be committed to jail, until he can be sent to one of the said asylums.

When venue changed or judge cannot sit.

1 R. C. p. 601,
§ 9; p. 604, § 15.
1840-41, p. 78, ch.
70.
1847-8, p. 50, § 24.

§ 22. A circuit court may, on the motion either of the accused or of the attorney for the commonwealth, or without such motion, for good cause, order the *venue* for the trial of a criminal case in such court, to be changed to some other circuit court.*

1 R. C. p. 602.
1847-8, p. 150,
§ 25, 28.

§ 23. When the *venue* is so changed, the court making the order shall recognize the witnesses and the accused, (if the offence be bailable and bail be given,) to appear on some certain day before the court to which the case is removed; if the offence be not bailable, or the bail required be not given, the court shall remand him to its own jail, and order its officer to remove him thence to the jail of the court to which the case is removed, so that he shall be there before the day for the appearance of the witnesses.

1 R. C. p. 602.
1847-8, p. 150,
§ 26, 27.
2 Va. Cas. 162.

§ 24. The clerk of the court, which orders a change of *venue*, shall certify copies of the recognizances aforesaid, and of the record of the case, to the clerk of the court to which

* See 1 Va. Cas. 125, 137, 223; 2 Va. Cas. 68, 69, 162; 4 Leigh 669.

the case is removed, who shall thereupon issue a *venire facias*, directed to the officer of such court; and such court shall proceed with the case as if the prosecution had been originally therein, and for that purpose the certified copies aforesaid shall be sufficient.

§ 25. When the judge of a circuit, in which a prosecution is pending, is connected with the accused or party injured, or so situated in respect to the case as, in his opinion, to render it unfit that he should preside at the trial, he may enter the fact on the record. 1847-8, p. 151, § 29.

§ 26. Thereupon, if the offence be cognizable in the county or corporation court, the judge may cause the record and proceedings to be certified to such court, which shall proceed therein as if the proceedings had originated in that court. Id. § 30.

§ 27. If the offence be not so cognizable, the case may be continued until the next term of the said circuit court, and the clerk thereof shall certify a copy of the entry, made under the twenty-fifth section, to the general court, which shall assign some other judge to hold the court for the trial of the accused. Id. § 31.

Of the verdict. In what time prisoner must be tried.

§ 28. If a person indicted of felony be by the jury acquitted of part and convicted of part of the offence charged, he shall be sentenced for such part as he is so convicted of, if the same be substantially charged in the indictment, whether it be felony or misdemeanor. Id. § 40. 1844-5, p. 60, ch. 71. 9 Leigh 620, 627, 683.

§ 29. If a person indicted of murder be found by the jury guilty thereof, they shall in their verdict find whether he is guilty of murder in the first or second degree. If the accused confess the indictment to be true, the court shall examine the witnesses and determine the degree of the crime, and give sentence accordingly. 1 R. C. p. 616, 17, § 2. 1847-8, p. 152, § 41.

§ 30. On an indictment for felonious homicide, the jury may find the accused not guilty of the felony, but guilty of involuntary manslaughter. And on any indictment for maliciously shooting, stabbing, cutting or wounding a person, or by any means causing him bodily injury, with intent to kill him, the jury may find the accused not guilty of the offence charged, but guilty of maliciously doing such act with intent to maim, disfigure or disable, or of unlawfully doing it, with intent to maim, disfigure, disable or kill, such person. 1 R. C. p. 618, § 9. 1847-8, p. 124, § 20.

§ 31. In a prosecution for grand larceny, if it be found that the thing stolen is of less value than twenty dollars, the jury may find the accused guilty of petit larceny; and in a prosecution for petit larceny, though the thing stolen be of the value of twenty dollars or more, the jury may find the accused guilty; and in either case, he shall be sentenced for petit larceny. 1 R. C. p. 603, § 12. 1830-31, p. 106, ch. 38, § 3.

§ 32. On an indictment for felony, the jury may find the accused not guilty of the felony, but guilty of an attempt to com- 1847-8, p. 124, § 21. 1 Vict. ch. 85.

mit such felony; and a general verdict of not guilty upon such indictment, shall be a bar to a subsequent prosecution for an attempt to commit such felony.

§ 33. On an indictment against a free negro, for a felony triable in a circuit court, the jury may find the accused not guilty of the offence charged, but guilty of any offence of which a free white person might be found guilty on such indictment; and the same proceedings shall be had in such case as if the accused were a free white person, although such free negro be not triable in a circuit court, under the first section of the two hundred and eighth chapter, for the offence of which he is convicted.

Ante. p. 773, ch.
208, § 1.

1847-8, p. 124,
§ 43.
9 Leigh 627.
11 Leigh 643.
3 Grat. 615.

§ 34. When there are several counts in an indictment or information, and a general verdict of guilty is found, judgment shall be entered against the accused, if any count be good, though others be faulty. But on the trial, the court, on the motion of the accused, may instruct the jury to disregard any count that is faulty.

Id. § 44.

§ 35. When two or more persons are charged and tried jointly, the jury may render a verdict as to any of them as to whom they agree; whereupon, judgment shall be entered according to the verdict; and as to the others, the case shall be tried by another jury.

1 R. C. p. 607,
§ 28.
1847-8, p. 152,
§ 45.
2 Va. Cas. 74, 162,
527.
1 Rob. 731.

§ 36. Every person charged with felony, and remanded to a superior court for trial, shall be forever discharged from prosecution for the offence, if there be three regular terms of such court, after his examination, without a trial, unless the failure to try him was caused by his insanity; or by the witnesses for the commonwealth being enticed or kept away, or prevented from attending by sickness or inevitable accident; or by a continuance granted on the motion of the accused; or by reason of his escaping from jail or failing to appear according to his recognizance, or of the inability of the jury to agree in their verdict.

Adjournment of question to general court.

1 R. C. p. 222,
§ 12; p. 232, § 14.
1847-8, p. 153,
§ 49.
3 Leigh 761.
4 Leigh 663.
9 Leigh 648.
11 Leigh 636, 638.

§ 37. A circuit court in a criminal case, may, with the consent of the accused, adjourn a question of law to the general court, which shall decide the same and certify its decision to the court from which the question was adjourned: The accused need not be present, when the question is argued and decided in the general court.

CHAPTER CCIX.

OF EXCEPTIONS, WRITS OF ERROR AND EXECUTION OF JUDGMENT.

<i>Bills of exception, writ of error, &c.</i>		<i>Execution of sentence.</i>	
SEC.		SEC.	
1.	When bill of exceptions may be taken.	8.	} Sentence of death; execution of; how certified.
2.	How execution of sentence suspended.	9.	
3.	} How writ of error awarded.	11.	} Sentence of confinement in penitentiary; record to be certified.
4.		12.	
5.		13.	} Rules as to employment of guard in conveying prisoner.
6.	When it operates as a <i>supersedeas</i> .	14.	
7.	Judgment on the writ of error.	15.	} Officer and guard privileged from arrest.
		16.	
		17.	How sentence of imprisonment until a fine paid, executed.

Bill of exceptions; execution of judgment suspended; writ of error.

§ 1. A party, in a criminal case or proceeding for contempt, for whom a writ of error lies to a higher court, may except to an opinion of the court and tender a bill of exceptions, which, (if the truth of the case be fairly stated therein,) the judge, judges or justices, or the greater part of those present, shall sign; and it shall be a part of the record of the case. This section shall not be construed to authorize a bill of exceptions to an opinion of an examining court.

1 R. C. p. 523, ch. 133, § 2.
1825-6, p. 20, ch. 18.
1847-8, p. 153, ch. 22, § 1; p. 154, § 6; p. 159, ch. 24, § 5.
1 Va. Cas. 264.
2 Va. Cas. 60, 158, 231.
9 Leigh 636.

§ 2. If a person sentenced, by a circuit court, to death or confinement in the penitentiary, ask for time to apply for a writ of error, the said court shall postpone the execution of its sentence, until a reasonable time beyond the first day of the next term of the general court, not exceeding thirty days after that day. In any other criminal case, wherein judgment is given by a circuit court, and in any case of judgment for a contempt, to which a writ of error lies, the court giving such judgment may postpone the execution thereof for such time and on such terms as it deems proper.

1 R. C. p. 225, § 27.
1830-31, p. 106, § 4.
1847-8, p. 153, § 3; p. 100, § 7.

§ 3. A writ of error shall lie in a criminal case,* to the judgment of a circuit court, from the general court; and when the case is against a free person for a misdemeanor, to a judgment of a county or corporation court, from the circuit court having jurisdiction over such county or corporation. It shall lie in any such case for the accused; and if the case be for violation of a law relating to the revenue, it shall lie also for the commonwealth.

1 R. C. p. 224, § 26.
1830-31, p. 106, § 4.
1835-6, p. 48, ch. 71.
1839-40, p. 15, § 37.
1847-8, p. 153, § 2, 4, 6.

§ 4. To a judgment against a free person for a contempt of court, other than for the non-performance of, or disobedience to, a judgment, decree, or order, a writ of error shall lie, when the judgment is of a county or corporation court, from the circuit court having jurisdiction over such county or corporation;

1825-6, p. 20, 21, ch. 18, § 1, 3.
1847-8, p. 160, § 6.
1 Va. Cas. 330.

* See 1 Va. Cas. 125, 127, 163, 202; 2 Va. Cas. 30, 224; 11 Leigh 675.

when it is of a circuit court, from the general court; and when it is of the general court, from the court of appeals; except that such writ shall not, under this section, be awarded to a judgment of the general court rendered on a writ of error.

1830-31, p. 106,
ch. 38, § 4.
1847-8, p. 160, § 6.

§ 5. In the vacation of a court from which a writ of error lies, the same may be awarded by any judge thereof; and when a writ of error lies from a circuit court, the same may be awarded in the vacation thereof, by any judge of the general court.

1830-31, p. 106,
§ 4.
1847-8, p. 154, § 5;
p. 160, § 7.
8 and 9 Vict. ch.
68.

§ 6. A writ of error, awarded under this chapter to any judgment, may operate as a *supersedeas* thereto, if the court or judge awarding it so direct, on such terms and conditions as the said court or judge may prescribe.

1 R. C. p. 224, 5.
§ 26.
1825-6, p. 20, ch.
18.
1830-31, p. 106,
§ 4.
2 Grat. 558.

§ 7. The court from which a writ of error lies, shall affirm the judgment if there be no error therein, and reverse the same in whole or in part if erroneous, and enter such judgment as the court whose error is sought to be corrected, ought to have entered; or remand the cause and direct a new trial;* affirming in those cases where the voices on both sides are equal.

Execution of sentence.

1 R. C. p. 608,
§ 30.
1847-8, p. 124,
§ 26.

§ 8. Sentence of death, except for insurrection or rebellion, shall not be executed sooner than thirty days after the sentence is pronounced.

1 R. C. p. 236,
§ 40.
1847-8, p. 154,
§ 7, 8.

§ 9. The clerk of the court pronouncing such sentence shall, as soon as may be, after the sentence, deliver a certified copy thereof to the officer of said court, who shall cause the sentence to be executed. Under such sentence, death shall be inflicted by hanging the convict by the neck until he is dead.

1847-8, p. 154,
§ 9.

§ 10. The officer executing a sentence of death shall certify the fact to the clerk of the court, who shall file the certificate with the papers in the case.

1 R. C. p. 621,
§ 21.
1847-8, p. 154,
§ 10.

§ 11. Every person sentenced by a court to confinement in the penitentiary, shall, as soon as may be, be delivered at the penitentiary by the officer of such court. If he fail to make such delivery within a reasonable time, he shall forfeit one hundred dollars.

1 R. C. p. 620,
§ 16.
1847-8, p. 154,
§ 11.

§ 12. The clerk of the court in which a person is sentenced to the penitentiary, shall forthwith transmit to the superintendent thereof a full copy of the record of the trial and conviction. If he fail so to do, he shall forfeit one hundred dollars.

1 R. C. p. 604, 5,
§ 17.
1841-2, p. 52, ch.
90, § 4.
1847-8, p. 154,
§ 12.

§ 13. The officer who is required to carry a prisoner to the penitentiary, or to any other place, may, if he deem it necessary for his safe conveyance, summon one person, but not more than one, as a guard to each prisoner, except as follows:

* See 2 Va. Cas. 122; 4 Leigh 669; 1 Rob. 676, 7; 2 Grat. 558; 5 Grat. 663.

§ 14. When the court, judge or justices, by whose judgment or order a prisoner is to be removed, shall think a stronger guard proper, and order it, as many persons as may be so ordered shall be summoned by the officer. 1 R. C. p. 622, § 25.
1847-8, p. 155, § 13.

§ 15. If on the way to the penitentiary or other place, in consequence of an attempt to rescue the prisoner, made or reasonably apprehended, or in consequence of any other unforeseen danger, the officer is satisfied that a stronger guard than was before summoned is necessary, he may summon such additional guard as is necessary. 1 R. C. p. 623, § 26.
1847-8, p. 155, § 14.

§ 16. The officer and guard, while conveying a prisoner to the penitentiary or other place, and returning therefrom, shall be privileged from arrest, except for felony and breach of the peace, allowing one day for every twenty miles. 1 R. C. p. 622, § 15.
1847-8, p. 155, § 15.

§ 17. If a person, who is sentenced to be confined in jail a certain term, and afterwards, until he pay a fine and the costs of the prosecution, fail to pay such fine and costs before the end of said term, he shall continue in confinement until the same be paid, or his discharge be ordered by the court. But the additional confinement shall in no case exceed six months from the end of said term. 1 R. C. p. 541, § 44.
1 Va. Cas. 138.
2 Va. Cas. 474.

CHAPTER CCX.

OF TAXATION AND ALLOWANCE OF COSTS.

SEC.

1. } Allowance for guard of a jail; how
2. } made and paid.
3. } Allowance for physician and cloth-
4. } ing for prisoner, and pay, &c.,
5. } of witnesses.
5. } When prosecutor to pay witnesses;
6. } when treasury to pay if there be
6. } no prosecutor.
7. Compensation to sheriff in certain cases.

SEC.

8. } By whom and how certificate of
9. } allowance to be made.
10. } Whole cost of prosecution certified
11. } and execution issued therefor.
12. Claims not presented in due time disallowed.
13. Fees of attorney for commonwealth; when not paid out of treasury; no judgment for costs against the commonwealth.

§ 1. When ordered by the court to do so, or it is in his own opinion necessary for the safe keeping of a prisoner under charge of, or sentence for crime, the jailor shall summon a sufficient guard, and the circuit court of the county or corporation, in which the jail is, may allow therefor so much as it deems proper, not exceeding one dollar a day for each man. 1 R. C. p. 605, § 19.
1821-2, p. 11, ch. 8, § 1.
1847-8, p. 156, § 6.

§ 2. The said circuit court, before certifying any allowance, shall enquire into the condition of the jail; if it appear that a guard was necessary, because of the insecurity of the jail, it shall* order the allowance to be certified to the said† court, 1821-2, id.
1822-3, p. 34, ch. 30, § 12.
1847-8, p. 156, § 7.

* In this section, as reported by the revisors, (p. 1030 of their reports,) there were the following words: "After a rule upon the justices of the county or corporation court, (which may be served upon the attorney for the commonwealth in said court,) if no sufficient cause be shewn against it;" they were struck out in the committee of revision. See next note.

† As a consequence of the amendment mentioned in the preceding note, the word *said* should have been struck out, and the words "*county or corporation*" inserted in lieu thereof; but this was casually omitted.

and it shall be chargeable to such county or town. But if otherwise, and the guard was necessary, the allowance shall be certified for payment out of the treasury.

1 R. C. p. 609,
§ 34, 35.
1820-21, p. 21,
ch. 15.
1847-8, p. 156,
§ 4, 5.

§ 3. A court may appoint a physician, to attend prisoners in its jail, and make him a reasonable allowance. It may also, when a person in its jail, charged with or convicted of an offence, is unable to provide himself with sufficient clothing, direct the jailor to provide him clothing, and allow therefor not exceeding ten dollars in one year. Allowances under this section, on being certified by such court, shall be paid out of the treasury.

1 R. C. p. 608,
§ 33.
1838, p. 69,
ch. 86.
1847-8, p. 157,
§ 8, 9, 10.
Ante, p. 666, 667,
ch. 176, § 34, 5, 6.

§ 4. The thirty-fourth, thirty-fifth and thirty-sixth sections of chapter one hundred and seventy-six, shall apply to a person attending as a witness, under a recognizance or summons in a criminal case, as well as to a person attending under a summons in a civil case; except that, in a criminal case, a witness, who travels over fifty miles to the place of attendance, shall have for each day's attendance one dollar instead of fifty cents, and a person residing out of this state, who attends a court therein as a witness, may be allowed by said court, for attendance and for travel to and from the place of his abode, as if he resided in the state.

1822-3, p. 12, ch.
9, § 6.
1847-8, p. 158,
§ 22.
1 Grat. 556.

§ 5. The sum to which a witness is entitled who attends for the commonwealth, and any other legal charges incurred in a case wherein there is a prosecutor, shall be paid by such prosecutor as if he were plaintiff in the case, unless there be a judgment against the defendant, in which case the same shall be taxed in the costs, and paid to the persons entitled thereto, by the sheriff or officer who may receive the same.

1822-3, p. 12, § 56.
1847-8, p. 158,
§ 5, 6.

§ 6. Payment shall not be made out of the treasury, to a witness attending for the commonwealth in any prosecution for a misdemeanor, unless it appears that the sum to which the witness is entitled cannot be obtained, if it be a case wherein there is a prosecutor and the defendant is convicted, by reason of the insolvency of the defendant, or if it be a case in which there is no prosecutor, by reason of the acquittal or insolvency of the defendant or other cause.

1 R. C. p. 605,
§ 18.
1847-8, p. 158,
§ 23.

§ 7. A sheriff or other officer, for travelling out of his county or corporation to execute process in a criminal case and doing any act in the service thereof, for which no other compensation is provided, shall receive therefor, out of the treasury, such compensation as the court, from which the process issued, may certify to be reasonable. When in a criminal case an officer renders any other service, for which no specific compensation is provided, the circuit court of the county or corporation in which such case may be, may allow therefor what it deems reasonable, and such allowance shall be paid out of the treasury. This section shall not prevent any payment under the thirteenth section of chapter forty-five which could have been made if this section had not been enacted.

Ante, p. 235, 236,
ch. 45, § 13.
Ante, p. 702, ch.
184, § 27.

1 R. C. p. 260,
§ 77; p. 605, § 17;
p. 608, § 32.

§ 8. The certificate required by the twenty-seventh section of chapter one hundred and eighty-four, shall, when the pay-

ment is to be to a clerk, be from the court whereof he is clerk, and, when it is to be to a sheriff or other officer, be from the court in which the prosecution is, or to which a justice shall certify as hereinafter mentioned. Any other expense incident to a proceeding in a criminal case, which is payable out of the treasury, otherwise than under the preceding section, or under the thirteenth section of chapter forty-five, shall be certified by such last mentioned court, where it is not otherwise provided. With the certificate of allowance there shall be transmitted, to the first auditor, the vouchers on which it is made.

§ 9. The entry of such certificate of allowance shall state how much thereof is on account of each person prosecuted.

§ 10. A justice before whom there is any proceeding in a criminal case, shall certify to the clerk of the court of his county or corporation; and a judge or court before whom there is, in a criminal case, any proceeding preliminary to conviction in another court, upon receiving information of the conviction, from the clerk of the court wherein it is, shall certify to such clerk all the expenses incident to such proceeding, which are payable out of the treasury.

§ 11. In every criminal case, the clerk of the court in which the accused is convicted, or, if the conviction be before a justice, the clerk to which the justice certifies as aforesaid, shall, as soon as may be, make up a statement of all the expenses incident to the prosecution, including such as are certified under the preceding section, and execution for the amount of such expenses shall be issued and proceeded with; and chapter forty-three shall apply thereto, in like manner as if, on the day of completing said statement, there was a judgment, in such court, in favour of the commonwealth against the accused, for the said amount as a fine.

§ 12. If, by reason of the failure of a person to present his claim in due time, a sum be not included in such execution, which would have been included, if so presented, such claim, unless there be good cause for the failure, shall be disallowed.

§ 13. No fee to any attorney for the commonwealth shall be payable out of the treasury, unless it be expressly provided. And in no case shall there be judgment for costs against the commonwealth.

CHAPTER CCXI.

GENERAL PROVISIONS AS TO PROCEEDINGS IN CRIMINAL CASES.

Sec.

1. Proceedings against an Indian, or one of Indian descent.
2. Summons to witnesses; penalty for not attending.

Of recognizances.

Sec.

3. } When and how recognizances
4. } taken; their condition.
5. Recognizances for insane person, minor, slave or married woman.

SEC.	SEC.
7. Recognizances taken out of court; where to be sent.	13. Proceedings of court, &c.; to whom surrender is made.
8. Where default recorded and process thereupon.	<i>As to fines on jurors, witnesses, &c.</i>
9. Surety discharged on payment into court.	14. Fines on jurors summoned on inquest.
10. How penalty remitted in whole or in part.	15. No fine imposed, unless party present or has failed to appear on service of a rule.
11. Defects of form, in action, &c., on recognizance, not to be regarded.	
12. Surety in recognizance may take principal and surrender him.	

Proceedings against Indians. Summons for a witness.

1847-8, p. 124,
ch. 11, § 37.

§ 1. In a criminal case against an Indian, or a person of Indian descent, (other than a negro,) the proceedings shall be as against a white person.

1 R. C. p. 608,
§ 29.
1847-8, p. 152, 3,
§ 46, 47.

§ 2. In a criminal case a summons for a witness may be issued by the attorney for the commonwealth. The twentieth, twenty-first, twenty-second, twenty-third and twenty-fourth sections of chapter one hundred and seventy-six shall, in other respects, apply to a criminal as well as a civil case, except that a witness in a criminal case shall be obliged to attend, and may be proceeded against for failing so to do, although there may not previously have been any payment, or tender to him, of any thing for attendance, mileage or tolls.

Ante, p. 664, ch.
176, § 20, 1, 2, 3, 4.

Of recognizances.

§ 3. A court or judge, letting any person to bail, shall require a recognizance to be given.

1842-3, p. 22,
ch. 18.

§ 4. Recognizances in criminal cases shall be payable to the commonwealth of *Virginia*. Every recognizance, under any chapter of this title, shall be in such sum as the court or officer requiring it may direct, and, unless it be of a witness, shall be with surety deemed sufficient by the court or officer taking it. The condition, when it is taken of a person charged with a criminal offence, shall be, that he appear before the court, judge or justice before whom the proceeding on such charge will be, at such time as may be prescribed by the court or officer taking it, to answer for the offence with which such person is charged; and when it is taken of a witness in a case against any such person, shall be, that he so appear to give evidence on such charge; and in either case shall be, that the person or witness shall not depart thence without the leave of said court, judge or justice; when taken for any other purpose, than to appear so to answer or give evidence, it shall be with condition that the person, of whom it is taken, shall keep the peace and be of good behaviour for such time, not exceeding one year, as the court or officer requiring it may direct; and if such court or officer direct, it may, when taken of a person so charged, be with condition for so keeping the peace and being of good behaviour, in addition to the other condition of his recognizance.

§ 5. A recognizance which would be taken of a person, but for his or her being insane, or a married woman, minor or slave, may be taken of another person, and without further surety, if such other person be deemed sufficient. 1834-5, p. 45, ch. 63. 1847-8, p. 132, § 25; p. 136, § 9; p. 137, § 4.

§ 6. A person not giving, and for whom no other person gives a recognizance required, shall be committed to jail. He shall be discharged therefrom when such recognizance is given, before the court or a conservator of the peace; or if it be to appear and give evidence, when such evidence is given; or if it be to keep the peace and be of good behaviour, when the period for which it was required has elapsed; or in any case, when the discharge of such person is directed, by the court in whose jail he is. 1847-8, p. 128, § 13; p. 132, § 26.

§ 7. A person taking a recognizance, out of court, shall forthwith transmit it to the clerk of the court for appearance before which it is taken, or, if it be not for appearance before a court, to the clerk of the county or corporation in which it is taken; and it shall remain filed in the clerk's office. 1847-8, p. 128, § 14.

§ 8. When a person, under recognizance in a criminal case, either as party or witness, fails to perform the condition thereof, if it be to appear before a court, his default shall be recorded therein. The process on every recognizance shall be issued from the court before which the appearance was to be, or, if it be not for such appearance, from the court in which it is taken, or, (when taken out of court,) in whose office the recognizance remains filed; and in a proceeding in one court on a recognizance entered in another, a copy thereof shall be evidence in like manner as the original would have been, if entered in the court wherein the proceeding is. 1 R. C. p. 600, § 4; p. 606, § 23. 1847-8, p. 133, § 32; p. 139, § 7; p. 146, § 25. 1 Va. Cas. 142. 2 Va. Cas. 351.

§ 9. A surety in a recognizance may, after default, pay into the court from which process has issued, or may issue thereon, the amount for which he is bound, with such costs as the court may direct, and be thereupon discharged. 1847-8, p. 132, § 33.

§ 10. When, in an action or *scire facias* on a recognizance, the penalty is adjudged to be forfeited, the court may, on application of a defendant, and in a county or corporation court with the consent of the attorney prosecuting, remit the penalty or any part of it, and render judgment on such terms and conditions as it deems reasonable. Id. § 34. 6 Rand. 731.

§ 11. No action or judgment on a recognizance shall be defeated or arrested by reason of any defect in the form of the recognizance, if it appear to have been taken by a court or officer authorized to take it, and be substantially sufficient. 1847-8, p. 132, § 325. 3 Grat. 82, 214.

§ 12. A surety in a recognizance may at any time take his principal and surrender him to the court or judge before whom the recognizance was taken, or, if it was taken by a court which is not in session, or by a justice, to a judge or justice of such court, or a justice of the county or corporation in which it was taken: whereupon said surety shall be discharged from liability for any act of the principal subsequent thereto. 1847-8, p. 132, § 36, 37, 38.

1847-8, p. 132,
§ 37, 38.

§ 13. If the surrender be before a judge or justice, he shall give the surety a certificate thereof, and the accused may be let to bail anew for the residue of the term, or to appear as before required, and on failure so to recognize, shall be committed to jail as in other cases of failure to give bail. If the surrender be to the court, it shall take such order as it deems proper.

As to fines on jurors, witnesses and others.

1 R. C. p. 612,
§ 50.

§ 14. The name of any person summoned by an officer, and failing to attend as a juror upon an inquest out of court, shall be returned by such officer to the next term of the court from which the process issued requiring such jury, or, if there be no such process, to the next term of the court of such officer's county or corporation. Such court shall fine such person, unless he have a reasonable excuse for his failure, eight dollars.

Id. § 51.
1 Va. Cas. 333.

§ 15. No court shall impose a fine upon a juror, witness or other person, for disobedience of its process or any contempt, unless he either be present in court at the time, or shall have been served with a rule of the court, returnable to a certain time, requiring him to shew cause why the fine should not be imposed, and shall have failed to appear and shew cause.

CHAPTER CCXII.

OF PROCEEDINGS AGAINST NEGROES.

SEC.		
1.	How slave, for a limited time, or one suing for freedom, to be tried.	9. } When value of slave paid owner ;
2. }	How court constituted for trial of	10. } when not.
3. }	negroes.	11. }
4. }	Counsel assigned slave. Court to	12. } Condemned slave escaping, how
5. }	be unanimous for conviction of a	proceeded against when re-ta-
	negro.	ken.
6.	Evidence written down and re-	13. } Negroes how tried and punished
	cord sent to executive.	14. } for misdemeanor.
7.	Case may be continued; but trial	15. } Appeals in such cases.
	must be had in three terms of	16. }
	the court.	17. } If slave condemned as free, how
8.	When accused may be convicted	18. } owner to claim, and proceedings
	of an offence of lower grade	thereon.
	than that charged.	19. } If he be executed, how owner to
		proceed, and be paid.

What negroes tried as slaves; how negroes tried for felony.

1839-40, p. 83, ch.
61, § 2.
1 R. C. p. 430,
§ 42.
1847-8, p. 163,
§ 15.

§ 1. A negro who is a slave for a term of years, or for the life of another, shall be prosecuted, tried and punished, for an offence, as a slave. A negro detained as a slave, but suing for his freedom, shall be prosecuted and tried for an offence as a free negro.

§ 2. The county and corporation courts, consisting of five justices thereof, at the least, shall be courts of *oyer and terminer* for the trial of negroes charged with felony, except in the case of free negroes charged with felonious homicide, or an offence punishable with death. Such trial shall be on a charge entered of record stating the offence, but without a jury or a presentment, information or indictment. The justice, who committed or recognized the accused, shall not sit on his trial.

1 R. C. p. 428,
§ 32.
1831-2, p. 22,
§ 11.
1841-2, p. 48, ch.
84.
1847-8, p. 162, ch.
26, § 1.
4 Leigh 652.
5 Leigh 746.

§ 3. No justice interested in a slave shall sit on his trial for felony.

1 R. C. p. 431,
§ 43.
1847-8, p. 162, § 2.

§ 4. The court, on the trial of a slave for felony, shall assign him counsel, and allow such counsel a fee not exceeding twenty-five dollars, which shall be paid by the owner of the slave.

1 R. C. p. 429,
§ 32.
1847-8, p. 162, § 3.

§ 5. No slave shall be condemned to death, nor a free negro to the penitentiary, unless all the justices sitting on his trial agree in the sentence.

1 R. C. id.
1847-8, id. § 4.

§ 6. When a slave is condemned to death, or a free negro to the penitentiary, the court shall cause the testimony given on his trial to be committed to writing and filed of record, and the clerk shall forthwith transmit a copy of the whole record to the executive.

1 R. C. p. 430,
§ 40.
1847-8, p. 162,
§ 5.

§ 7. The court, for good cause, may continue such trial from term to term, and, if a trial be commenced at any term, such term may be extended until the trial is concluded. But if any such case be continued until the end of the third regular term after the commitment of the accused, or a recognizance for his appearance for trial, he shall be discharged, unless such continuance was on his own application, or because of his insanity or his escape from custody or failure to appear, or by reason of the witnesses for the commonwealth being enticed or kept away, or prevented from attending by sickness or some inevitable accident.

1 R. C. p. 429,
§ 34, 35.
1847-8, p. 162,
§ 6.

§ 8. On a charge against a negro, for felony, in a county or corporation court, the court may adjudge the accused not to be guilty of the offence charged, but guilty of an offence, of which a free white person might be found guilty, on an indictment against him for such felony, and ascertain the punishment so far as it is not fixed by law, and give judgment accordingly.

Of slaves condemned to death.

§ 9. The value of a slave condemned and executed, or sentenced to, or reprieved for, sale and transportation, shall be paid to the owner out of the treasury; such value shall be the cash price for which he would sell at public sale, with a knowledge of his condemnation. It shall be fixed by the court, and entered of record.

1 R. C. p. 430,
§ 37, 41.
1839-40, p. 51, ch.
61, § 1.
1847-8, p. 162, § 7.

§ 10. If such slave be a slave only for a term of years, or for the life of another person, he shall be valued accordingly.

1839-40, id. § 2.
1847-8, p. 162, § 8.

1 R. C. p. 430, § 38.
1847-8, p. 163, § 9. § 11. A slave brought into this state contrary to law, or who, in passing through it, or temporarily sojourning in it, committed the offence for which he is condemned, shall not be valued by the court or paid for out of the treasury; nor shall a slave be so paid for, who may be condemned for an offence, in the commission of which his owner was either principal or accessory and convicted thereof.

1 R. C. p. 429, § 36.
1823-4, p. 36, ch. 34, § 1.
1847-8, p. 163, § 10. § 12. If a slave, condemned to death, escape before his execution, and be re-taken, the jailor of the court, by which the slave was condemned, shall, as soon as may be, inform the said court of the fact; and the said court, five justices at least sitting, on being satisfied of his identity, shall cause the sentence to be carried into effect on a day appointed by said court.

Negroes tried for misdemeanor; appeals in such cases.

1827-8, p. 30, ch. 37, § 5.
1847-8, p. 163, § 11. § 13. A slave shall be tried, for a misdemeanor, by a justice of the county or corporation in which the offence is committed.

1831-2, p. 22, § 9.
1845-6, p. 66, ch. 93.
1847-8, p. 163, § 12.
2 Rob. 842. § 14. A free negro shall be tried by such justice, for a misdemeanor, punishable by stripes; for any other misdemeanor, he may be tried as other free persons. But a justice before whom a free negro is charged with a misdemeanor, punishable by fine and imprisonment, or either, may either try him, and inflict on him such punishment, as he would inflict on a slave for the same offence, or commit or recognize him for trial, at the next court of the county or corporation, at which a grand jury will be empaneled.

1827-8, p. 30, § 6.
1847-8, p. 163, § 13. § 15. In the case of a negro convicted, of a misdemeanor, by a justice, there may be an appeal from the decision to the county or corporation court, by the negro, if free, or if he be a slave, by his owner. Such negro shall, unless let to bail, be committed by the justice to jail until the next term of such court, and the witnesses shall also be recognized to appear then.

Id. § 14. § 16. Every such appeal shall be tried without pleadings in writing, and without a continuance, except for good cause; the court shall hear all the evidence produced on either side, and give such judgment as seems to it proper, and enforce the execution thereof.

Slave sentenced as a free man.

Id. § 16.
1845-6, p. 67, ch. 95. § 17. If a negro sentenced, as a free person, to confinement in the penitentiary, be claimed as a slave, the claimant may present a petition, under oath, to the circuit court of *Henrico*, stating the grounds of his claim; and such court shall issue a warrant to the superintendent of the penitentiary, requiring him to bring the prisoner before the court on a specified day, with a statement of the cause of his confinement.

1845-6, p. 67, ch. 95. § 18. When the prisoner is brought before the court, a jury shall be empaneled without formal pleading, to ascertain

whether he is the slave of the claimant or not. If the jury find that he is not, he shall be remanded to the penitentiary. If they find that he is, and that the offence for which he was convicted, when committed by a slave, is punishable with stripes, he shall be delivered to the claimant. But if they find that the said offence, when committed by a slave, is punishable with death, he shall be remanded to the penitentiary, and there confined and treated in all respects as a slave condemned to death, and reprieved for sale and transportation. The court shall ascertain his value, which shall be paid to the owner out of the treasury.

§ 19. If a negro, condemned as a free man and executed, be claimed to have been a slave, the claimant may present his petition, under oath, to the court in which the conviction was, stating the grounds of his claim, and a jury shall be empaneled to enquire into the fact. If they find that the convict was the property of the claimant, when he was executed, his value shall be ascertained by the court, and paid to such claimant. In an enquiry under this or the preceding section, the attorney for the commonwealth, in the court, shall appear for the state.

Title 56.

PENITENTIARY.*

CHAP. 213. Of the organization, government, and discipline of the penitentiary.

214. Of crimes by convicts.

215. Of proceedings in criminal cases against convicts.

CHAPTER CCXIII.

OF THE ORGANIZATION, GOVERNMENT AND DISCIPLINE OF THE PENITENTIARY.

<i>General provisions.</i>		<i>Committee of convict.</i>	
SEC.		SEC.	
1.	} Penitentiary continued. Annual report of its condition by a committee of assembly.	5.	} Committee of convict; when and how appointed; his duties and liabilities.
2.		10.	
3.	Governor to prescribe rules; they to be posted up in the prison.	11.	When and how real estate of convict may be sold.
4.	Record of conviction and register to be kept.		

* The revisors under the act of October 1776 (as to which, see preface to this Code) thought that of the offences then punishable with death there were many for which a different punishment should be provided; they suggested hard labour on roads, canals and other public works. (See *Jefferson's Works*, vol. 1, p. 37.) "A bill for proportioning crimes and punishments in cases heretofore capital," was drawn by Mr. *Jefferson*, and enclosed to Mr. *Wythe* in a letter of November 1778. (Id. 119.) The bill is remarkable for its brevity and simplicity; and the notes to it shew no ordinary learning and research. (Id. p. 120 to 133.) Another bill "for the employment, government and support of malefactors condemned to labour for the commonwealth," was framed to accompany it. (Id. p. 123, 4, note.)

<i>Treatment of convicts.</i>		SEC.		
SEC.		35.	} His and his assistants' general powers and duties.	
12.	} Personal treatment of convicts.	36.		
13.		37.		
14.	} Labour of convicts, and social intercourse.	38.	} When to deliver goods, &c. to general agent, or sell them at penitentiary.	
15.		39.		
16.		40.	} To have work done for lunatic asylums; and account therefor.	
17.	} Their diet; when allowed to walk or work in the yard.	41.		
18.		42.	} To render, annually, general account to the board, to be examined by them and reported.	
19.	} Convicts required by governor to work on public grounds.	43.		
20.				
21.	<i>The guards; rewards for prisoners escaping.</i>			
22.	} Punishment for misbehaviour; what allowed them on their discharge.	44.	} Guards, from the public guard.	
23.		45.		
	<i>The surgeon and hospital; visitors.</i>			
24.	} Duty of surgeon. Hospital; book kept therein; report of its condition; who allowed to visit penitentiary.	46.	} Interior guard; how appointed, dismissed and paid.	
to		47.		
28.		48.	} Rewards for prisoners escaping; how paid.	
		49.		
		50.		
	<i>Of the general agent.</i>			
29.	} Quorum; board's general duties.	51.	} General duties of storekeeper and agent; liability of him and his sureties.	
30.		52.		
31.	Power of board investigating any matter ordered by the governor.			
32.	} Two of them to attend taking inventories; annual report of board.	53.	} To pay balances in his hands to order of the board; quarterly accounts to be settled; how balances recovered.	
33.		54.		
	<i>The superintendent and his assistants.</i>			
34.	Residence of superintendent; fuel allowed him.			
		55.	} He may carry on mercantile business, with consent of the board.	
		56.		
			Goods and money in his hands to be transferred to his successor.	

General provisions.

1 R. C. p. 621, ch. 171, § 19.

§ 1. The public jail and penitentiary house shall continue, under the name of *The Penitentiary*, to be appropriated to the confinement of convicts sentenced according to law to confinement therein. Persons sentenced to imprisonment by a court of the *United States*, held in *Virginia*, may also be confined therein and be safely kept and employed, pursuant to

Those two bills were reported to the house of delegates by the committee for courts of justice on the 30th of November 1786, but were not passed.

The act of 1779 "for the removal of the seat of government" from *Williamsburg* to *Richmond*, (10 Hen. Stat. p. 85,) having provided for the erection, on one square, of the capitol, and on another square, of "the halls of justice," and "a public jail," Mr. *Jefferson* states, (vol. 1 of his Works, p. 37,) that he was written to in 1785 (when in *Paris*) by the directors of public buildings, to advise them as to a plan for the capitol, and to add one of a prison. For the capitol he had a model made in stucco from the *maison quarree* of *Nismes* (changing the order,) and to adapt it for use drew a plan which was forwarded to the directors in 1786, and "carried into execution with some variations not for the better." He also sent to the directors, instead of a plan for a common prison, a plan for one on the principle of solitary confinement (*Jefferson's Works*, vol. 1, p. 38, 143.) The act of 1796 to amend the penal laws (Sess. Acts, p. 4, ch. 2,) ascribed by Mr. *Jefferson* to Mr. *George Keith Taylor*, (*Jefferson's Works*, vol. 1, p. 143,) adopted the plan of solitary confinement, and directed the building now called the penitentiary. The subsequent legislation in *Virginia* with respect to solitary confinement was adverted to by the late revisors in a note (p. 1039 of their reports) wherein reference is made to the provisions in the following acts: 1796, p. 6, ch. 2, § 22; 1816-17, p. 19, ch. 13, § 7; 1 R. C. p. 623, § 27, 34; 1823-4, p. 18, ch. 10, § 1, 3, 9, 12; 1825-6, p. 10, ch. 11, § 2; 1826-7, p. 11, ch. 7, § 2; 1828-9, p. 11, ch. 11; 1832-3, p. 18, ch. 19, § 2; 1834-5, p. 20, ch. 19; 1838, p. 36, ch. 26, § 1.

the rules of the prison, so far as is not inconsistent with such sentence, until discharged by due course of the law of the *United States*.

§ 2. Annually its condition shall be examined and reported on, by a joint committee of the general assembly. 1824-5, p. 9, ch. 7, § 7.

§ 3. The governor may, from time to time, prescribe rules, not contrary to law, for the preservation of the property at, and the health of the convicts, in the penitentiary, and the government of the interior thereof. Printed copies of such of the said rules, as may relate to the government and punishment of the convicts and of any provisions of law which the governor may direct, shall be posted up in at least six conspicuous places of the interior. 1 R. C. p. 624, § 31; p. 627, § 47; 1828-9, p. 11, ch. 11, § 1.

§ 4. The clerk of the penitentiary shall file and preserve the record of the trial and conviction of each convict, and keep a register describing him, the term of his confinement, for what offence, and when received into the institution. 1 R. C. p. 620, § 18.

Committee of convict's estate.

§ 5. When a person, other than a married woman, is sentenced to confinement in the penitentiary for more than a year, the estate of such convict, if he have any, both real and personal, shall, on the motion of any party interested, be committed by the court of the county or corporation in which his estate, or some part thereof, may be, to a person selected by the court; who, after giving bond before the said court, in such penalty as it may prescribe, shall have charge of said estate until such convict is discharged from confinement. 1 R. C. p. 631, § 64; 1820-21, p. 21, ch. 14, § 1, 2.

§ 6. Such committee may sue and be sued, in respect to debts due to or by such convict and any other of the convict's estate, and shall have the privilege of an administrator, as to the right of retaining for his own debt.

§ 7. He shall allow, (subject to the claims of creditors,) a sufficient maintenance out of the convict's estate, for his wife and family, if any; the wife to be entitled, so long as he is confined, to the profits of such portion of his estate, as she would have if he had died intestate. 1d.

§ 8. The committee shall render accounts of his trust, and may be made to account therefor, shall be entitled to compensation for his services, and may forfeit his right thereto, in the same manner as if he were an administrator or guardian. 1d.

§ 9. Every such committee shall deliver such estate, as he may be liable for at that time, to the convict on his discharge, or to his real and personal representatives on his death before being discharged. 1d.

§ 10. If the person so appointed refuse the trust, or fail to give bond as aforesaid, the court, on like motion, shall commit the estate to the sheriff of the county or sergeant of the corporation, who shall be the committee, and he and the sureties in his official bond, bound for the faithful performance of the trust. 1822-3, p. 35, ch. 31.

Ante, p. 394. ch.
85, § 46, 47, 48; p.
535, ch. 128.

§ 11. The real estate of such convict may be sold, when necessary for the payment of his debts, in the same manner, as the real estate of an insane person in the hands of a committee.

Treatment of convicts.

1 R. C. p. 623,
§ 28.

§ 12. Every convict, when first brought to the penitentiary, shall be washed, cleaned and kept in a separate lodging, until the surgeon certifies he is fit to be put among the other prisoners; and the clothes he wore shall be either destroyed, or purified and preserved until he is discharged, and then returned to him.

Id. § 19, 20.
1836-7, p. 18, ch.
18, § 4.

§ 13. The male and female convicts shall be kept separate from each other, and the males shall have their heads and beards close shaven or sheared, once a fortnight or oftener if need be. Every convict shall be clothed at public expense, in a distinctive uniform for each sex, made of coarse materials.

1 R. C. p. 623,
§ 29.
1823-4, p. 17, ch.
10, § 9.

§ 14. The convicts shall be kept to the hardest labour suitable to their sex and fitness, and such of them, as need it, instructed in some mechanic art.

1 R. C. p. 624,
§ 29.
1823-4, id.

§ 15. Social intercourse, conversation and acquaintance between the convicts, shall be prevented as far as may be, and silence constantly observed by them as far as possible.

1 R. C. id. § 30.

§ 16. The convicts not disabled by ill health, shall, when their solitary confinement does not prevent it, labour each day, Sundays excepted, so long as the season will permit, (allowing an hour each for breakfast and dinner,) not exceeding eight hours in November, December and January, nine in February and October, and ten in all other months.

1 R. C. p. 623,
§ 29.
1839, p. 16, § 2.

§ 17. The convicts shall be fed on bread of Indian meal, or other coarse bread, and have one meal a day of coarse meat. The board of directors may change or regulate the diet for good cause.

1 R. C. p. 625,
§ 38.

§ 18. The superintendent may allow the convicts extra diet, when they whitewash the walls of the rooms and cells, or wash the floors thereof. This work shall be done by the prisoners in rotation; the whitewashing shall be at least twice a year, and the other washing once a week, or oftener if directed by the board.

Id.

§ 19. He may allow them, at stated times, to walk for the benefit of their health, in the yard, and, with the approbation of two of the directors, to work therein; but in either case, in the presence or view of the superintendent or an assistant.

1839, p. 15, ch.
18, § 1.
1842-3, p. 21,
ch. 16.
1843-4, p. 20,
ch. 21.
1845-6, p. 16, ch.
8, § 6.

§ 20. He shall, at the discretion and under the direction of the governor, employ them at *Richmond*, or within a mile thereof, in improving, repairing or working on the public buildings, grounds and property.

1 R. C. p. 625,
§ 37.
1823-4, p. 16, § 9.

§ 21. Each convict shall be locked up during the night and every Sunday, (except to attend religious service,) and when the number of apartments will permit, each separately, unless in the hospital.

1 R. C. p. 624, 6,
§ 31, 41.

§ 22. A convict guilty of profanity, indecent behaviour, idleness, neglect or wilful mismanagement of work, insubordi-

nation, an assault not amounting to felony, or a violation of any of the rules prescribed by the governor, may, under the orders of the superintendent, subject to the said rules, be punished by lower and coarser diet, the iron mask or gag, solitary confinement in a cell or the dungeon, or by stripes. Under such orders and subject to the said rules, the superintendent may, when a convict is charged with an offence, for which he is to be tried under chapter two hundred and fourteen, or two hundred and fifteen, confine him in a cell or the dungeon until such trial.

§ 23. The board, in its discretion, may allow a convict, on his discharge, not exceeding thirty dollars, and, if he needs it, a suit of coarse clothing.

The surgeon and hospital. Visitors.

§ 24. The surgeon to the penitentiary shall visit the penitentiary once at least every day, and oftener, when there are cases of sickness requiring it, or when he is called on to attend by the superintendent. Before leaving the city of *Richmond* at any time, he shall notify the superintendent of his intention, and the time he expects to be absent, and what physician may be called on to officiate for him, in his absence.

§ 25. The surgeon shall render to the convicts all surgical and medical aid which may be requisite.

§ 26. The room now kept for that purpose, shall continue to be used as a hospital. A sick convict shall be kept in it, when the surgeon so prescribes. There shall be a book in which shall be entered the name of each convict, put in the hospital, and the time that he goes in and comes out of it.

§ 27. One of the directors, in such order as the board may direct, shall once a week visit the hospital with the superintendent; and the two shall make a report of the treatment and condition of the sick. The annual report of the board shall shew the condition of the health of the convicts. It shall state the number in the hospital every month from each ward, the disease of each person put in the hospital, and the number of deaths in each ward.

§ 28. The governor, members of the council, and of the general assembly, ministers of the gospel for performing religious service, and the officers and others having duties or business therein, may go into the interior of the penitentiary. Any other person, who shall obtain a permit to do so from the governor, may also visit the same, between the hours of nine in the morning and noon of any day, except Saturday or Sunday. There shall be no conversation between a visitor and a convict, unless special license therefor be given by the governor or superintendent.

Of the directors.

§ 29. A majority of the directors shall be a quorum for business of the board.

1 R. C. p. 621,
 § 19; p. 624, § 31.
 1820-21, p. 18, 20,
 § 4, 6, 8.
 1823-4, p. 17, ch.
 10, § 9.
 1828-9, p. 11, ch.
 11, § 1.
 1829-30, p. 8, ch.
 4, § 2.
 1838, p. 37, ch.
 26, § 3.
 1839, p. 16, ch.
 18, § 2.
 1843-4, p. 20, § 21.

§ 30. The board may apply the means of the institution to repair and enlarge the shops, and increase the number of cells when required. They shall cause to be done in the penitentiary, any work which can be done therein, towards effecting the improvement or repairs mentioned in the twentieth section. They shall direct the manufacturing operations, and have the goods manufactured and work done at the penitentiary, (except as otherwise provided,) delivered weekly to the general agent, to be disposed of by him, at such prices as may be mentioned in duplicate invoices thereof; one of which shall be delivered to the agent, and the other, with the agent's receipt thereon, shall be preserved at the penitentiary by the clerk. And they shall cause a proper set of books to be kept by the clerk, have a general supervision and control in the management of the penitentiary and penitentiary store, and over the officers thereof, and see that the rules for their government, prescribed by law or by the governor, are observed by the officers.

1838, p. 37, § 4.

§ 31. When an investigation is ordered by the governor, as to a matter concerning the penitentiary, or the conduct of persons connected therewith, the clerk of the penitentiary, by order of the board, may issue a summons directed to the sheriff of the county of *Henrico*, commanding him to summon any person to attend at the penitentiary on a certain day, to give evidence before the board, and may administer an oath to such person. The board shall have like powers under the twenty-second and twenty-third sections of chapter one hundred and seventy-six, as if it was a court whose clerk had issued the summons. And the clerk of the penitentiary shall make such entry as would, under the thirty-fourth section of the same chapter, if the attendance were before a court, be made by the clerk thereof. The sum to which the witness is entitled, shall be paid out of the funds of the institution. Testimony taken before the said board shall not be read on the trial, by a court martial, of an officer or soldier of the public guard.

Ante, p. 664, ch.
 176, § 22, 23.
 Ante, p. 666, § 34.

1827-8, p. 10, ch.
 10, § 2.

§ 32. Two or more of the directors shall, at the end of each fiscal year, attend the taking of the inventories of the goods and stock on hand at the penitentiary and penitentiary store.

1 R. C. p. 625,
 § 32.
 1820-21, p. 20,
 § 14.
 1823-4, p. 17,
 ch. 10, § 9.
 1829-30, p. 9, ch.
 4, § 6.

§ 33. The board shall annually, before the first of November, make a report to the governor, to be laid before the general assembly, shewing the expense to the state of the penitentiary for the previous fiscal year, and its condition at the end of such year, the manner in which the rules have been executed and their effect, and making any proper suggestions as to the discipline and organization of the penitentiary.

The superintendent and his assistants.

1 R. C. p. 627,
 § 46.
 1819-20, p. 19, ch.
 21, § 1.
 1838, p. 37, ch.
 26, § 2.

§ 34. The superintendent shall reside in the front building of the penitentiary, and shall be allowed his fuel.

§ 35. He shall be the chief executive officer of the peniten-

tiary, and direct its internal police and management, subject to the control of the board of directors.

§ 36. His assistants, whose duties he shall prescribe, shall be designated and stand in authority as first assistant, second assistant, and so on. The first assistant shall act in place of the superintendent when he is absent. The duties of the first assistant shall in his absence be performed by the second assistant, and so on in succession.

§ 37. The superintendent, from time to time, shall submit to the board a list of such materials and other things as are required at the penitentiary. He shall, if the board so order, make, or aid the general agent in making, purchases thereof; and without such order, may, if it be necessary, make purchases in the recess of the board, subject to its approval. He shall keep or have kept, in each ward, a book shewing separately an account of the raw materials as received, and of the manufactures and work done therein, and in his annual report render an account shewing the result of the operations of each ward.

§ 38. The superintendent may, in the recess of the board, deliver to the general agent goods manufactured or work done, when necessary to effect a sale thereof, taking from him a written receipt for them, stating their prices.

§ 39. He may, when he can without neglect of other duties, sell and deliver such articles manufactured, and job work done at the penitentiary, as may be called for there, delivering to the general agent an account of such articles and work, and paying to him all money received therefor. On the responsibility of the agent, any such sale may be on credit, if he in writing authorize it, but not otherwise.

§ 40. When the board of directors of either of the lunatic asylums desire to purchase, for the use thereof, cloth, clothing or shoes, of the manufacture of the penitentiary, if they make requisitions therefor in reasonable time, the superintendent of the penitentiary shall pack up the articles, forward them to the asylum at its cost, and charge the articles to the state.

§ 41. The superintendent shall, at the end of each fiscal year, furnish the first auditor with a receipt from an officer of the asylum, for any articles so furnished within said year, and a statement of their prices; for which the penitentiary shall have credit and the asylum be charged.

§ 42. He shall, at the end of each fiscal year, state a general account between the state and the penitentiary for such year, charging the latter with the value of the tools, machinery, fixtures and materials on hand at the commencement of the year; the raw materials purchased during the year; the rations furnished for the convicts; the salaries of all the officers, and all the contingent expenses of the penitentiary; and crediting it with the work of the convicts delivered from the penitentiary to the general agent and others; the work and repairs done by the convicts on the prison and other public property; the clothing furnished the convicts; and the value of the tools,

machinery, fixtures and materials on hand at the end of the year; with all other debits and credits necessary to shew a true account of the institution with the state.

1820-21, p. 20,
§ 13.

1829-30, p. 7, ch.
4, § 1.

§ 43. The said account shall be laid before the board of directors, and when approved by them and balanced, be made a part of their annual report.

The guards. Rewards for prisoners escaping.

1 R. C. p. 627,
§ 62.
1836-7, p. 18, § 2.
Ante, p. 172, ch.
33, § 12.

§ 44. The force sent to the penitentiary from the public guard, shall consist of a non-commissioned officer's command, and be in charge of such officer, and a chain of sentinels shall surround the penitentiary night and day.

1843-4, p. 20, ch.
21, § 1.

§ 45. While the convicts are employed in any work on the public grounds or property, outside of the penitentiary, they shall be attended by a sufficient guard, detailed by the captain of the guard.

1 R. C. p. 625,
§ 37.
1836-7, p. 17, ch.
18, § 1.
1843-4, p. 55, ch.
71, § 2.

§ 46. The superintendent may employ a guard, not exceeding six persons, for the interior of the penitentiary, who shall perform such duties as the superintendent (subject to the control of the board) may direct.

Id.

§ 47. Any person so employed, may be dismissed from service at the discretion either of the board or the superintendent.

1846-7, p. 68, ch.
80, § 3.

§ 48. The compensation of the said guard shall be allowed and certified by the board, at a rate not exceeding thirty dollars per month for each person, and paid by the general agent.

1 R. C. p. 627,
§ 48.
1846-7, p. 67, ch.
80, § 1.

§ 49. If any convict escape from the penitentiary or from the custody of the superintendent, he may offer a reward for the apprehension and re-delivery of such convict, not exceeding five hundred dollars, one half thereof to be paid by the institution and the other by the superintendent, his assistants and the interior guard, in proportion to the amount of their salaries.

Id.

§ 50. None of said officers shall be entitled to any such reward, or any part of it, unless expressly authorized by the superintendent.

Of the general agent.

1 R. C. p. 624,
§ 31.
1820-21, p. 17, ch.
13, § 3.
1823-4, p. 19, § 20.
1831-2, p. 10, ch.
7, § 2, 3.

§ 51. The general agent and store-keeper of the penitentiary shall receive, and give receipts for, such of the goods manufactured, and work done at the penitentiary, as may be delivered him, and shall account for the same at the prices mentioned in the invoices thereof, or return the same to the penitentiary to be re-priced; or if the board so direct, sell the same at auction. He and his sureties shall be responsible for the amount of all debts, for such goods or work, contracted with him, or under his authority, and for all money received by him as such agent.

1820-21, p. 17, 19,
§ 3, 10.
1823-4, p. 19, § 20.
1831-2, p. 10, § 2.

§ 52. On the requisition of the board, he shall purchase all materials and other things required for such work or for the convicts.

Id.

§ 53. All money for which the general agent is responsible, shall be paid as the board may direct. On every first day of

January, April, July and October, during his continuance in office, he shall, and after his death, when the board may require, his personal representative shall, settle with the board on account of what he is responsible for, and, on such settlement, shall produce the vouchers for his payments. If on a settlement any balance appear to be due from him, it shall be paid by him or his representative into the treasury, unless the board direct it to be applied otherwise. Should there be a failure so to do, the same may be recovered in the same manner, from the same persons, and with like damages, as if it were due from a sheriff for taxes.

§ 54. The general agent shall, at the end of each fiscal year, render to the board accounts of his transactions for the same year, in such manner as the board may require. On the one hand, he shall be charged at the prices mentioned in the accounts and invoices (delivered to him,) with all goods and work which shall, within the said year, have been disposed of under the thirty-ninth section, or been in his hands to be disposed of under sections thirty and thirty-eight, or otherwise. On the other hand, he shall, after taking an inventory of the same, have credit for such of the said goods and work as remain in his hands at the end of the year; credit likewise for such thereof as have been returned by him to the penitentiary; and if sales of any be made at auction by order of the board, there shall be a credit or charge, as the case may require, for the difference between the amount of such sales and the prices with which he may have been charged for what is so sold. He shall have credit also for payments made by him, within said year, under the board's authority, and for such commission as is prescribed by the eighteenth section of chapter fourteen. The said accounts, after being examined, and, where necessary, corrected by the board, shall be made a part of the annual report, and such entry made thereof by the clerk, as the board may direct.

§ 55. If permission be first obtained from the board, the general agent may carry on mercantile business on his own account.

§ 56. When a new general agent qualifies, the goods and money, in the possession of the late agent or his representative, shall be transferred to the new agent.

CHAPTER CCXIV.

OF CRIMES BY CONVICTS.

SEC.

1. } Convict in penitentiary or in custody of its officers guilty of specific offences; or conspiring to commit them.
2. }
3. Punishment for said offences.
4. Convict not discharged pending prosecution; nor sentenced to

SEC.

5. But, if convicted of other felony than under this chapter, to be sentenced as if he were discharged when he committed it.

1 R. C. p. 628,
§ 50, 51.
1820-21, p. 19,
§ 4, 12.
1836-7, p. 18, § 3.

1820-21, p. 19,
§ 12, 14.
1829-30, p. 8,
§ 1, 4.
1831-2, p. 10, ch.
7, § 1.

Ante, p. 92, ch.
14, § 18.

1831-2, p. 11, § 6.

1836-7, p. 18, § 3.

1 R. C. p. 629,
§ 54, 56.
1843-4, p. 55, ch.
72, § 1.
2 Va. Cas. 467.

§ 1. A convict confined in the penitentiary, or in custody of an officer thereof, shall be deemed guilty of felony, if he shall kill, wound, or inflict other bodily injury upon an officer or guard of the penitentiary; or shall escape from the penitentiary or such custody; or shall break, cut or injure any building, fixture or fastening of the penitentiary, or any part thereof, for the purpose of escaping or aiding any other convict to escape therefrom, or rendering the penitentiary less secure as a place of confinement; or shall make, procure, secrete or have in his possession any instrument, tool or thing for the said purpose, or with intent to kill, wound or inflict bodily injury as aforesaid; or shall resist the lawful authority of an officer or guard of the penitentiary for the said purpose or with such intent.

1a. § 2. Any three or more convicts so confined, or in such custody, who shall conspire together to commit any offence mentioned in the preceding section, shall be deemed guilty each of felony.

1a. § 3. A convict guilty of such killing as is mentioned in the first section, or of any act therein mentioned from which death ensues to such officer or guard, shall be punished with death. For any other offence mentioned in either of the two preceding sections, a convict, unless he be under a sentence of confinement for life, shall be confined in the penitentiary not less than one, nor more than five years after the end of the term for which he shall then be subject to confinement, and, whether he be under such sentence for life or not, he shall be kept in solitary confinement, for such portion of the time of his confinement in the penitentiary as may be fixed by the jury, not being more than one-half, nor less than one twelfth part, of the time that he may be confined therein, after being sentenced under this chapter; which solitary confinement may commence immediately on his being so sentenced, but shall not exceed a month at any one time.

1 R. C. p. 629,
§ 55.
1843-4, p. 55, § 1.

§ 4. A person prosecuted for an offence under this chapter, shall not be discharged from the penitentiary while such prosecution is pending. And a person convicted of such offence, shall not, by reason thereof, be sentenced under the twenty-fifth or twenty-sixth section of chapter one hundred and ninety-nine, except as follows.

Ante. p. 752, ch.
199, § 25, 26.

1843-4, p. 55, § 2.

§ 5. If a convict in the penitentiary shall commit any felony, (other than is provided for in the three first sections of this chapter,) which is punishable by confinement therein or with death, he shall suffer the same punishment as if he had been discharged before committing it.

CHAPTER CCXV.

OF PROCEEDINGS IN CRIMINAL CASES AGAINST CONVICTS.

SEC.

1. Jurisdiction for trial of convicts in penitentiary.
2. When convict has been before sentenced to penitentiary and not sentenced to additional term of confinement therefor, to be reported to circuit court of *Henrico*.

SEC.

3. } How the fact tried, and convict
4. } sentenced.
5. }
6. } Offences committed in penitentiary, how charged and tried.
7. }
8. }
9. No examining court in such case. Who competent witnesses therein. Proceedings in other respects.

§ 1. All criminal proceedings against convicts in the penitentiary, shall be in the circuit court of law for the county of *Henrico*. 1 R. C. p. 620, § 16, 55, 57. 1843-4, p. 56, § 3.

§ 2. When a person convicted of an offence, and sentenced to confinement therefor in the penitentiary, is received therein, if he was before sentenced to a like punishment, and the record of his conviction does not shew that he has been sentenced under the twenty-fifth or twenty-sixth section of chapter one hundred and ninety-nine, the superintendent of the penitentiary shall give information thereof, without delay, to the said circuit court of *Henrico*, whether it be alleged or not in the indictment on which he was so convicted, that he had been before sentenced to a like punishment. 1 R. C. p. 620, § 16. Ante, p. 752, ch. 199, § 25, 26.

§ 3. The said court shall cause the convict to be brought before it, and upon an information filed, setting forth the several records of conviction, and alleging the identity of the prisoner with the person named in each, shall require the convict to say whether he is the same person or not.

§ 4. If he say he is not, or remain silent, his plea, or the fact of his silence, shall be entered of record, and a jury of bystanders shall be empaneled, to enquire whether the convict is the same person mentioned in the several records. Id. 2 Rob. 845.

§ 5. If the jury find that he is not the same person, he shall be remanded to the penitentiary; but if they find that he is the same person, or if he acknowledge in open court, after being duly cautioned, that he is the same person, the court shall sentence him to such further confinement as is prescribed by chapter one hundred and ninety-nine, on a second or third conviction, as the case may be. 1 R. C. p. 620, § 16. 2 Va. Cas. 465. Ante, p. 752, ch. 199, § 25, 26.

§ 6. Upon a complaint in writing and under oath, presented to the said circuit court, or to the judge thereof in vacation, that any convict in the penitentiary has committed an offence punishable under chapter two hundred and fourteen, proceedings may be had for the said offence, either at a regular term of the court, or at a special term, to be appointed by its order, or by a warrant of the judge, directed to the clerk of the court, who shall give notice of such special term to the attorney for the commonwealth and other officers of the court. 1 R. C. p. 630, § 57. 1843-4, p. 57, § 3. Ante, p. 797, ch. 214.

1 R. C. p. 630,
§ 57.
1843-4, p. 57, § 3. § 7. The clerk shall issue all necessary process; and a grand jury and a *venire* shall be summoned, to attend at the time appointed in such warrant, or at such time as the court may direct.

1 R. C. p. 630,
§ 58.
2 Va. Cas. 467. § 8. The judge of said court, when an indictment is found against the accused, shall issue a warrant to the superintendent, to bring him before the court as well as any other persons confined in the penitentiary, who are required as witnesses on either side.

1 R. C. p. 630,
§ 59, 60, 61.
2 Grat. 581. § 9. In any such prosecution no examining court shall be had; and all other *convicts** in the penitentiary shall be competent witnesses for or against the accused, except that negroes shall not be allowed as witnesses against a white person. In all other respects the proceedings, trial and judgment shall be had, pronounced and executed, as in other cases of prosecutions for offences punishable with death or confinement in the penitentiary.

Title 57.

CHAPTER CCXVI.

OF THE REPEAL OF ACTS OF A GENERAL NATURE.

2 Leigh 1869 686. § 1. All the provisions of the preceding chapters shall be in force upon and after the first day of July next; and all acts and parts of acts of a general nature, in force at the time of passing this act, shall be repealed from and after the said first day of July next, with such limitations and exceptions, as are hereinbefore or hereinafter expressed.

See ante, p. 101, 2,
§ 18. § 2. Such repeal shall not affect any offence or act committed or done, or any penalty or forfeiture incurred, or any right established, accrued or accruing, before the said first day of July next, or any prosecution, suit or proceeding pending on that day, except that the proceedings thereafter had shall conform, so far as practicable, to the provisions of this act; and when any penalty, forfeiture or punishment is mitigated by those provisions, such provisions may, with the consent of the party affected, be applied to any judgment to be pronounced after the said day.

3 Grat. 632.

§ 3. All persons who, at the time when the said repeal takes effect, shall hold any office under any of the acts hereby repealed, shall continue to hold the same according to the tenure thereof, except those offices which may have been abolished, and those as to which a different provision is made by this act.

* In the report of the revisors, (p. 1054, § 9,) the word was *convicts*; in the house of delegates, there was an amendment to the section, in which amendment the word *criminals* was used instead of *convicts*; but in the manuscript bill sent from the house of delegates to the senate, the word was written *convicts*, and the roll is like that bill.

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ERRATA.

PAGE.	SECT.	LINE.	
121	3	-	(In margin.) For <i>Id.</i> read <i>Vide.</i>
136	1	3	For <i>volunteer</i> read <i>voluntary.</i>
224	16	7	For <i>executien</i> read <i>execution.</i>
242	9	2	After <i>had</i> strike out <i>a.</i>
246	-	18	(Of note.) For 1794 read 1694.
299	1	2	For <i>roceive</i> read <i>receive.</i>
307	-	top	Strike out <i>Illegal paper</i> and insert <i>Banks of.</i>
328	1	1	(In table of contents.) After <i>writ</i> insert <i>of ad quod damnum.</i>
331	25	3	(In table of contents.) Strike out <i>coming</i> before <i>across</i> , and insert <i>carrying.</i>
346	3, 4	-	(In margin.) After <i>See ante, p. 88, ch. 13</i> , strike out § 2, and insert § 8.
356	1	1	(In margin.) Insert 1 before 8.
365	8	2	After <i>furnish</i> strike out <i>to.</i>
368	6	12	(Of second clause.) For <i>conditions</i> read <i>condition.</i>
378	9	5	(From top.) After <i>paid</i> strike out <i>by</i> and insert <i>to.</i>
380	25	6	For <i>suspended</i> read <i>superseded.</i>
384	-	13	(Of note.) For <i>vested</i> read <i>recited.</i>
395	50	6	Before <i>hands</i> insert <i>his.</i>
410	61	1	For <i>inspectors</i> read <i>inspector.</i>
426	16	2	Before <i>weights</i> strike out <i>the.</i>
427	7	3	After <i>hour</i> fill blank with <i>of such.</i>
470	7	6	For <i>persons</i> read <i>person.</i>
*472	2	1	<i>Person</i> should be <i>persons.</i>
*485	38	2, 3	Parenthesis should end after <i>survey</i> instead of after <i>effect.</i>
526	1	2	For <i>court</i> read <i>courts.</i>
533	5	8	For <i>satisfy</i> read <i>satisfy.</i>
628	5	1	(In table of contents.) For <i>officers</i> read <i>officer.</i>
726	10	2	(In table of contents.) For <i>an owner</i> read <i>insurer.</i>
733	-	top	Number of page (next after 732,) should be 733 instead of 735.
735	10	3	After <i>convicted of</i> insert <i>or.</i>
*748	34	2	Alter <i>forty</i> strike out <i>three</i> and insert <i>two.</i>
"	"	-	(In margin.) Strike out 579, 580, <i>ch. 143, § 1</i> , and insert 578, <i>ch. 142, § 1.</i>
770	-	-	Caption to § 13. For <i>term</i> read <i>time.</i>

* The errors with this mark are in the bill as engrossed and enrolled.

The Code of Virginia with the Declaration of Independence and
Constitution of the United States and the Declaration of Rights and
Constitution of Virginia

Richmond 1849

J.rel. 1722

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